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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

Saeed Cohen,

Debtor.

Case No. 2:13-bk-26483-NB

Chapter 11

Adv. Case No.

Fariba Cohen

Plaintiff,

v.

Saeed Cohen

Defendant.

**COMPLAINT FOR NON-
DISCHARGEABILITY PURSUANT TO 11
U.S.C. § 523(a)(4)**

1 Plaintiff, Fariba Cohen (“Plaintiff”), by and through her counsel, as and for her complaint
2 in this matter (“Complaint”), alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This adversary proceeding is brought in the Chapter 11 case of debtor, Saeed
5 Cohen, Case No. 2:13-bk-26483-NB (the “Bankruptcy Case”). Subject to, and without prejudice
6 to Plaintiff’s pending motion for abstention filed in the Bankruptcy Case (Doc. #60), this Court
7 has jurisdiction over this adversary proceeding pursuant to 28 U.S.C §§ 157, 1334, and 11 U.S.C.
8 § 523(a). Venue in this Court is proper pursuant to 28 U.S.C. § 1409 as this adversary
9 proceeding arises under and in connection with a case under Title 11 which is pending in this
10 District. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

11 **THE PARTIES**

12 2. Plaintiff is an individual who resides at 622 North Alpine Drive, Beverly Hills,
13 CA 90210.

14 3. Defendant Saeed Cohen (the “Debtor”) is an individual who resides at 2959 N
15 Beverly Glen Cir, Los Angeles, CA 90077.

16 4. Plaintiff and the Debtor are married, but parties to a pending dissolution of
17 marriage proceeding in Los Angeles Superior Court, Case No. BD 495 060 (the “Divorce
18 Proceeding”).

19 **FACTUAL ALLEGATIONS**

20 5. Plaintiff hereby incorporates by reference the factual allegations contained in her
21 *Motion re Breach of Fiduciary Duty, for an Accounting, and for Sanctions against Saeed Cohen*
22 *and his Attorney of Record* and the papers filed in support thereof in the Divorce Proceeding, true
23 and correct copies of which (without exhibits) are attached hereto as Exhibit 1 (the “Fiduciary
24 Duty Motion”).

25 6. Pursuant to multiple provisions of the California Family Code, including, without
26 limitation, §§ 721, 1100, and 2100 *et seq.*, Debtor owed fiduciary duties to Plaintiff with respect
27 to his management and control of community assets and liabilities both during the Debtor’s
28 marriage to Plaintiff and after their separation.

1 Divorce Proceeding, and Plaintiff's filings in the Bankruptcy Case.

2 13. At all times, Debtor acted in bad faith and with actual knowledge of, or gross
3 recklessness towards, the improper nature of his fiduciary behavior.

4 14. But for the Debtor's conduct, the value of the property that Debtor defalcated and
5 fraudulently misappropriated could have been used to satisfy the value of Plaintiff's claims
6 against the Debtor, and/or her claims against the community estate.

7 15. By reason of the foregoing, the Debtor is indebted to Plaintiff in an amount to be
8 determined at trial but in no event less than \$50,000,000.00.

9 **WHEREFORE**, Plaintiff prays for a judgment as follows:

10 On the First Cause of Action against Saeed Cohen:

- 11 1) For damages in the sum of at least \$50,000,000.00;
12 2) For an award of punitive damages;
13 3) For prejudgment interest;
14 4) For costs, including attorneys' fees; and
15 5) For such other and further relief as the Court deems just and proper.

16 DATED: September 23, 2013

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

19 By: /s/ Simon Aron

SIMON ARON

Attorneys for Plaintiff, Fariba Cohen

Exhibit “1”

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): STEPHEN A. KOLODNY, SBN 38026 JEFF M. STURMAN, SBN 177695 KOLODNY & ANTEAU 9100 Wilshire Blvd. 9-W Beverly Hills, CA 90212-3425 TELEPHONE NO: 310-271-5533 FAX NO. (Optional): 310-271-3918 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): FARIBA COHEN	FOR COURT USE ONLY CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles NOV 16 2011 John A. Clarke, Executive Officer/ Clerk By: Suzette L. Stein, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 NORTH HILL STREET MAILING ADDRESS: 111 NORTH HILL STREET CITY AND ZIP CODE: LOS ANGELES, CA 90012 BRANCH NAME: CENTRAL DISTRICT	PETITIONER/PLAINTIFF: FARIBA COHEN RESPONDENT/DEFENDANT: SAEED COHEN
NOTICE OF MOTION <input type="checkbox"/> Child Custody <input type="checkbox"/> Child Support <input type="checkbox"/> Attorney Fees and Costs	<input type="checkbox"/> MODIFICATION <input type="checkbox"/> Visitation <input type="checkbox"/> Spousal Support <input checked="" type="checkbox"/> Other (specify): Breach of Fiduciary Duty and Sanctions Against Respondent and Accounting
CASE NUMBER: BD 495 060	

1. TO (name): Respondent, Saeed Cohen, and his attorney of record
 2. A hearing on this motion for the relief requested in the attached application will be held as follows:

a. Date:	1/17/12	Time:	8:45	<input checked="" type="checkbox"/> Dept.: 60	<input type="checkbox"/> Rm.:
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b. Address of court ☒ same as noted above ☐ other (specify):

3. Supporting attachments:

- | | |
|--|--|
| a. Completed Application for Order and Supporting Declaration (form FL-310) and a blank Responsive Declaration (form FL-320)
b. <input type="checkbox"/> Completed Income and Expense Declaration (form FL-150) and a blank Income and Expense Declaration
c. <input type="checkbox"/> Completed Financial Statement (Simplified) (form FL-155) and a blank Financial Statement (Simplified) | d. <input type="checkbox"/> Completed Property Declaration (form FL-160) and a blank Property Declaration
e. <input checked="" type="checkbox"/> Points and authorities
f. <input checked="" type="checkbox"/> Other (specify): Declarations of Fariba Cohen, Jeff M. Sturman, James A. Dooley, *
*William A. Duerksen, CPA/ABV |
|--|--|

Date: November 16, 2011

Kolodny & Anteau by Jeff M. Sturman

(TYPE OR PRINT NAME)

ORDER

(SIGNATURE)

4. ☐ Time for ☐ service ☐ hearing is shortened. Service must be on or before (date):
 5. Any responsive declaration must be served on or before (date):
 6. If child custody or visitation is an issue in this proceeding, Family Code section 3170 requires mediation before or concurrently with the hearing listed above. The parties are ordered to attend orientation and mandatory custody services as follows:

Date:

JUDICIAL OFFICER

NOTICE: If you have children from this relationship, the court is required to order payment of child support based on the incomes of both parents. The amount of child support can be large. It normally continues until the child is 18. You should supply the court with information about your finances. Otherwise, the child support order will be based on the information supplied by the other parent.

You do not have to pay any fee to file declarations in response to this Notice of Motion (including a completed Income and Expense Declaration (form FL-150) or Financial Statement (Simplified) (form FL-155) that will show your finances). In the absence of an order shortening time, the original of the responsive declaration must be filed with the court and a copy served on the other party at least nine court days before the hearing date. Add five calendar days if you serve by mail within California. (See Code of Civil Procedure 1005 for other situations.) To determine court and calendar days, go to www.courtinfo.ca.gov/selfhelp/courtcalendars/.

PETITIONER/PLAINTIFF: FARIBA COHEN	CASE NUMBER:
RESPONDENT/DEFENDANT: SAEED COHEN	BD 495 060

7. PROOF OF SERVICE BY MAIL

a. I am at least age 18, not a party to this action, and am a resident or employed in the county where the mailing took place. My residence or business address is:

b. I served copies of the following documents by enclosing them in a sealed envelope with postage fully prepaid, depositing them in the United States mail as follows:

(1) Papers served:

- (a) *Notice of Motion* and a completed *Application for Order and Supporting Declaration* (form FL-310) and a blank *Responsive Declaration* (form FL-320)
- (b) ☐ Completed *Income and Expense Declaration* (form FL-150) and a blank *Income and Expense Declaration*
- (c) ☐ Completed *Financial Statement (Simplified)* (form FL-155) and a blank *Financial Statement (Simplified)*
- (d) ☐ Completed *Property Declaration* (form FL-160) and a blank *Property Declaration*
- (e) ☐ Points and authorities
- (f) Other (specify):

(2) Manner of service:

- (a) Date of deposit:
- (b) Place of deposit (city and state):
- (c) Addressed as follows:

c. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)



Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courtinfo.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Response* (Form MC-410). (Civil Code, § 54.8.)

PETITIONER/PLAINTIFF: FARIBA COHEN	CASE NUMBER: BD 495 060
RESPONDENT/DEFENDANT: SAEED COHEN	

APPLICATION FOR ORDER AND SUPPORTING DECLARATION

—THIS IS NOT AN ORDER—

☒ **Petitioner** ☐ **Respondent** ☐ **Claimant** requests the following orders:

1. ☐ **CHILD CUSTODY** ☐ **To be ordered pending the hearing**
a. Child's name and age b. Legal custody to (name of person who c. Physical custody to (name of
makes decisions about health, education, etc.) person with whom child will live.)

- d. ☐ **Modify existing order**
(1) filed on (date):
(2) ordering (specify):

- e. ☐ As requested in form ☐ FL-311 ☐ FL-312 ☐ FL-341(C) ☐ FL-341(D) ☐ FL-341(E)

2. ☐ **CHILD VISITATION** ☐ **To be ordered pending the hearing**

- a. As requested in: (1) ☐ Attachment 2a (2) ☐ Form FL-311 (3) ☐ Other (specify):

- b. ☐ **Modify existing order**
(1) filed on (date):
(2) ordering (specify):

- c. ☐ One or more domestic violence restraining/protective orders are now in effect. (Attach a copy of the orders if you have one.) The orders are from the following court or courts (specify county and state):

- (1) ☐ **Criminal: County/state:**
Case No. (if known):

- (3) ☐ **Juvenile: County/state:**
Case No. (if known):

- (2) ☐ **Family: County/state:**
Case No. (if known):

- (4) ☐ **Other: County/state:**
Case No. (if known):

3. ☐ **CHILD SUPPORT (An earnings assignment order may be issued.)**

- a. Child's name and age

- b. Monthly amount requested (if not by guideline)
\$

- c. ☐ **Modify existing order**
(1) filed on (date):
(2) ordering (specify):

4. ☐ **SPOUSAL OR PARTNER SUPPORT (An earnings assignment order may be issued.)**

- a. ☐ Amount requested (monthly): \$
b. ☐ **Terminate existing order**
(1) filed on (date):
(2) ordering (specify):

- c. ☐ **Modify existing order**
(1) filed on (date):
(2) ordering (specify):

NOTE: To obtain domestic violence restraining orders, you must use the forms *Request for Order (Domestic Violence Prevention)* (form DV-100), *Temporary Restraining Order (Domestic Violence Prevention)* (form DV-110), and *Notice of Court Hearing (Domestic Violence Prevention)* (form DV-109).

PETITIONER/PLAINTIFF: FARIBA COHEN	CASE NUMBER: BD 495 060
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5. ☐ ATTORNEY FEES AND COSTS a. ☐ Fees: \$ b. ☐ Costs: \$
6. ☐ PROPERTY RESTRAINT ☐ To be ordered pending the hearing
- a. The ☐ petitioner ☐ respondent ☐ claimant is restrained from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life.
- ☐ The applicant will be notified at least five business days before any proposed extraordinary expenditures, and an accounting of such will be made to the court.
- b. ☐ Both parties are restrained and enjoined from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties or their minor children.
- c. ☐ Neither party may incur any debts or liabilities for which the other may be held responsible, other than in the ordinary course of business or for the necessities of life.
7. ☐ PROPERTY CONTROL ☐ To be ordered pending the hearing
- a. ☐ The petitioner ☐ respondent is given the exclusive temporary use, possession, and control of the following property that we own or are buying (specify):
- b. ☐ The petitioner ☐ respondent is ordered to make the following payments on liens and encumbrances coming due while the order is in effect:
- | <u>Debt</u> | <u>Amount of payment</u> | <u>Pay to</u> |
|-------------|--------------------------|---------------|
|-------------|--------------------------|---------------|
8. ☒ OTHER RELIEF (specify): That: (a) Respondent be ordered to pay a monetary sanction of \$1 million to Petitioner pursuant to Family Code sections 271 and 2107; (b) Respondent be ordered to account for all transfers into and out of foreign bank accounts from January 2, 2010 to the present, and, (c) Respondent be ordered to disclose all payments of professional fees related*
9. ☐ I request that time for service of the Order to Show Cause and accompanying papers be shortened so that these documents may be served no less than (specify number): _____ days before the time set for the hearing. I need to have the order shortening time because of the facts specified in item 10 or the attached declaration.
10. ☐ FACTS IN SUPPORT of relief requested and change of circumstances for any modification are (specify):
☐ Contained in the attached declaration. (You may use Attached Declaration (form MC-031) for this purpose).
Declarations of Fariba Cohen, Jeff M. Sturman, James A. Dooley and William A. Duerksen, CPA/ABV

*related to this case and the source of those payments.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 16, 2011

Fariba Cohen

(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT)

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Petitioner, Fariba Cohen, requests that the Court find that Respondent, Saeed Cohen, has breached his fiduciary duties by failing to disclose material facts and information concerning income, assets, debts, expenses, and professional fees. To deter Respondent from continuing to breach his fiduciary duties and to remedy some of his past breaches of fiduciary duty, Petitioner requests that Respondent be ordered to: (a) pay a monetary sanction of \$1 million, (b) account for deposits into and transfers out of foreign bank accounts, and, (c) account for payments for attorneys' fees, other professional fees and costs.

As set forth in this Motion, Respondent's breaches of fiduciary include, but are not limited to, the following:

- In 2010, Respondent failed to disclose for several months that he transferred millions of dollars out of foreign accounts.

- On August 2, 2010, Respondent failed to disclose current financial information about the parties' community business, AMP Plus, causing the Court to make an interim support Order based on a year 2008 tax return that he knew or should have known under-reported the parties' income.

- On September 15, 2010, Respondent failed to disclose or produce documents concerning the "income, expenses and/or assets and liabilities of" AMP Plus even though those documents were requested by a document demand. Respondent produced those documents about a year later when he dumped about 1.2 million pages on Petitioner in response to a different document demand.

- In October 2010, Respondent failed to disclose that he took about \$615,000 from a community property bank account and about \$200,000 from the parties' community property business to pay his 2009 taxes.

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1 - In December 2010, Respondent refused to give Petitioner "equal access" to
2 the books and records of AMP Plus, the parties' community business, "upon request" as
3 required by *Family Code* section 1100(e).

4 - In January 2011, Respondent failed to disclose current financial information
5 about the parties' community business, AMP Plus, causing the Court to make a *pendente*
6 *lite* support Order based on a year 2009 tax return that he knew or should have known
7 under-reported the parties' income.

8 - In January 2011, Respondent failed to cause his attorney to disclose that he
9 already paid \$600,000 for year 2010 estimated taxes while his attorney argued in Court that
10 Respondent did not have the ability to pay estimated taxes and the amount of Respondent's
11 estimated tax liability had not been determined.

12 - From mid-January 2011 through May 2011, Respondent failed to disclose that
13 he paid support from money held in foreign accounts. Before January 2011, Respondent
14 stated under penalty of perjury that the money in the foreign accounts could only be used
15 to pay taxes, penalties and interest.

16 - In May 2011, Respondent filed an Income and Expense Declaration in which
17 he failed to disclose several hundred thousand dollars of professional fees that he paid to
18 his former Family Law attorneys, to his former forensic accountants and to his current
19 forensic accountants.

20 - Since August 2011, Respondent has failed to disclose the documents, if any,
21 that he relied on when he had his tax accountant make about \$47.7 million of adjustments
22 while preparing draft amended tax returns. Petitioner's attorney has informally requested
23 that information and has discovery was been propounded. Therefore, Petitioner cannot
24 determine whether the draft amended tax returns are accurate and she has not signed them.

25 As the Court already knows, Respondent has a long history of failing to disclose
26 income and assets on tax returns that he filed with the IRS and the FTB. Therefore, it should
27 come as no surprise that he has repeatedly failed to disclose material facts and information
28 to Petitioner.

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1 It should also not be surprising that Respondent's breaches of fiduciary duty have
2 prejudiced Petitioner. For example, when Respondent failed to disclose AMP Plus' income
3 at an August 2, 2010 hearing, the Court made an interim support Order based on a 2008 tax.
4 Several months later, Respondent produced amended tax returns for 2008 and 2009, as well
5 as a 2010 tax return. All of those tax returns show that AMP Plus' income was several
6 million dollars higher than original 2008 tax return that the Court used to make support
7 Orders on August 2, 2010, and that additional income is attributable to AMP Plus, the
8 community business that Respondent exclusively manages and controls. Therefore, if
9 Respondent had immediately, fully and accurately disclosed material facts and information
10 about AMP Plus finances, the support Orders would have been much higher.

11 To deter Respondent from committing additional breaches of fiduciary duty and to
12 remedy some of his past breaches of fiduciary duty, Petitioner requests: (a) that Respondent
13 be ordered to pay a monetary sanction pursuant to *Family Code* sections 271 and
14 2107(c), (b) that Respondent be ordered to account for his use of money held in foreign
15 accounts because Petitioner does not know the source of his support payments and his
16 payments for professional fees, and, (c) that Respondent be ordered to account for the
17 professional fees that he has incurred and paid.

18 Importantly, the breaches of fiduciary duty set forth in this Motion are not
19 Respondent's only breaches of fiduciary duty, and, at trial, Petitioner intends to ask the Court
20 to find that Respondent committed additional breaches of fiduciary duty. However, it is
21 important to deal with some of the discrete breaches of fiduciary duty that Respondent has
22 committed now to deter him from continuing to engage in this kind of conduct. *See Marriage*
23 *of Feldman* (2007) 153 Cal.App.4th 1470, 1498 ("As a matter of logic, to promote
24 cooperation a trial court must be able to apply sanctions during the course of the litigation
25 when the uncooperative conduct arises in order to encourage better behavior as the litigation
26 progresses.")

II.

FIDUCIARY DUTIES IN FAMILY LAW CASES

A. Applicable *Family Code* Sections Setting Forth Fiduciary Duties

Family Code section 721 states, in pertinent part, that::

(b) Except as provided in Sections 143, 144, 146, 16040, and 16047 of the Probate Code, in transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in Sections 16403, 16404, and 16503 of the Corporations Code, including, but not limited to, the following:

(1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying. [Emphasis in bold added by the undersigned]

....

Family Code section 1100(e) states as follows:

(e) Each spouse shall act with respect to the other spouse in the management and control of the community assets and liabilities in accordance with the general rules governing fiduciary relationships which control the actions of persons having relationships of personal confidence as specified in Section 721, until such time as the assets and liabilities have been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest and debts for which the community is or may be liable, and to provide equal access to all information, records, and books that pertain to the value and character of those assets and debts, upon request. [Emphasis in bold added by the undersigned]

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1 *Family Code* section 2100 states that it is California's "public policy" to promote "a full
2 and accurate disclosure of all assets and liabilities in which one or both parties have or may
3 have an interest. . . ." Additionally, both parties have a "continuing duty to immediately, fully
4 and accurately update and augment" their disclosures to the extent that there have been
5 "material changes." *Family Code* section 2102 makes these disclosure obligations more
6 specific by stating that:

7 (a) From the date of separation to the date of the distribution of
8 the community or quasi-community asset or liability in question,
9 each party is subject to the standards provided in Section 721,
as to all activities that affect the assets and liabilities of the other
party, including, but not limited to, the following activities:

10 (1) The accurate and complete disclosure of all assets
11 and liabilities in which the party has or may have an
12 interest or obligation and all current earnings,
13 accumulations, and expenses, including an immediate,
full, and accurate update or augmentation to the extent
there have been any material changes.

14

15 (c) From the date of separation to the date of a valid,
16 enforceable, and binding resolution of all issues relating to child
17 or spousal support and professional fees, each party is subject
to the standards provided in Section 721 as to all issues relating
to the support and fees, including immediate, full, and accurate
disclosure of all material facts and information regarding the
income or expenses of the party.

18 **B. Applicable Case Law Regarding Fiduciary Duties**

19 Almost 20 years ago, the California Supreme Court quoted the predecessor of
20 *Family Code* section 1100(e) and then stated that:

21 [That statute] makes clear that each spouse is entitled to
22 complete disclosure of all relevant information to allow an
independent review of the marital property and financial status
23 of the spouses. [Citations omitted] Whatever right [husband] has
to inspect records of the corporation, [wife] also has, either
24 indirectly through Terry, or directly, as in this case, by means of
third party discovery. It follows that if [husband] has a right to
25 inspect any corporate records, he cannot, consistent with his
fiduciary duty, refuse to cooperate in obtaining for [wife] those
26 records that are relevant to this proceeding. . . .

27 *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 715.

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Later cases, have affirmed trial court findings that a spouse breaches his or her fiduciary duties by failing to accurately declare income (*Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1294-1295), by failing to disclose the existence of assets (*Marriage of Rossi* (2001) 90 Cal.App.4th 34; *Marriage of Feldman* (2007) 153 Cal.App.4th 1470), and by failing to disclose information about the value of assets (*Marriage of Brewer & Federici* (2001) 93 Cal.App.4th 1334).

In a very recent case, *Marriage of Margulis* (2011) 198 Cal.App.4th 277, the Court of Appeal held that when a non-managing spouse presents prima facie proof that community assets of a certain value have disappeared, the managing spouse has the burden of proof to account for those missing assets. In reaching that conclusion, the Court of Appeal relied on principles that apply when deciding whether to shift the burden of proof, as well as the fiduciary duties that apply in Family Law cases.

With regard to fiduciary duties, the opinion quotes and discusses *Family Code* sections 721, 1100 and 2100 et seq. It then states as follows:

Taken together, these Family Code provisions impose on a managing spouse affirmative, wide-ranging duties to disclose and account for the existence, valuation, and disposition of all community assets from the date of separation through final property division. These statutes obligate a managing spouse to disclose soon after separation all the property that belongs or might belong to the community and its value, and then to account for the management of that property, revealing any material changes in the community estate, such as the transfer or loss of assets. This strict transparency both discourages unfair dealing and empowers the nonmanaging spouse to remedy any breach of fiduciary duty by giving that spouse the "information concerning the [community's] business" needed for the exercise of his or her rights (*Corp. Code*, 16403, subd. (c)(1); 721, subd. (b)), including the right to pursue a claim for "impairment to" his or her interest in the community estate (1101, subds. (a), (g) & (h)). And most importantly for present purposes, in a trial where community assets are missing, these statutory duties of disclosure and accounting serve to shift the burden of proof on missing assets to the managing spouse.

We find support for this crucial shift of the burden of proof in the recurring mandate, running throughout the statutory scheme, that the managing spouse must furnish information to the other spouse concerning the community property. For example, various statutes require the managing spouse to make "full and accurate disclosure of all [community] assets" (2100, subd. (c)) and "of all material facts ... regarding the existence,

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1 characterization, and valuation" of those assets (1100, subd.
2 (e)), and to "immediately, fully and accurately update and
3 augment" that disclosure (2100, subd. (c)). Collectively, these
4 provisions impose a *sua sponte* duty on the managing spouse
5 to advise the nonmanaging spouse of the existence and value
6 of the community property. (See *Feldman, supra*, 153
7 Cal.App.4th at p. 1488, 64 Cal.Rptr.3d 29 ["Aaron had a fiduciary
8 duty to disclose the existence of the 401(k) account ... in the first
9 place without prodding from Elena"]; *In re Marriage of Brewer &*
10 *Federici* (2001) 93 Cal.App.4th 1334, 1347-1348, 113
11 Cal.Rptr.2d 849 [managing spouse had affirmative duty to
12 acquire and disclose information concerning value of community
13 pension plan].)

14 These Family Code statutes impose a similar *sua sponte* duty on
15 the managing spouse to furnish information concerning the
16 disposition of community assets. For example, section 721
17 requires a spouse to produce "full information of all things
18 affecting any transaction which concerns the community
19 property" (721, subd. (b)(2)), to "[a]ccount[] to the [other]
20 spouse, and hold [] as a trustee, any benefit or profit derived
21 from any transaction ... which concerns the community property"
22 (721, subd. (b)(3)), and to furnish "[w]ithout demand, any
23 information concerning the [community's] business" that the
24 other spouse requires for the exercise of his or her rights
25 (*Corp. Code*, 16403, subd. (c)(1), italics added; 721, subd. (b)).
26 (See *In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 296,
27 39 Cal.Rptr.2d 673 (*Haines*) [721 is a statute "of mutual
28 accountability, requiring each spouse to show his or her conduct
in connection with an interspousal transaction conformed to the
legal standard" applicable to fiduciaries].)

These substantial *sua sponte* duties of disclosure and
accounting bind the managing spouse until the community
property is divided. (2100, subd. (c); 2102, subd. (a)(1).) It
follows, then, that these statutory duties can play a significant
role at a trial to divide the property. In a situation like the present
case, where the nonmanaging spouse makes a *prima facie*
showing that community assets are missing, that showing
implicates the managing spouse's duty to "update and augment"
disclosure as to "any material changes" in the community
property. (2100, subd. (c).) In fact, section 2100 states that the
purpose of this continuing disclosure requirement is "so that ...
at the time of trial on these issues, each party will have a full and
complete knowledge of the relevant underlying facts." (2100,
subd. (c).) That statutory purpose is served, and the duty to
account enforced, by placing the burden of proof to account for
missing assets on the managing spouse.

Margulis, supra at 1270-1272; see also *Marriage of Tharp* (2011) 188 Cal.App.4th 1295
(failure to disclose assets and liabilities, as well as false representation about the existence
of a prenuptial agreement were breaches of fiduciary duty).

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1 **C. Applicable Statutes Regarding Sanctions And Remedies**

2 *Family Code* section 271(a) states as follows:

3 (a) Notwithstanding any other provision of this code, the court
4 may base an award of attorney's fees and costs on the extent to
5 which the conduct of each party or attorney furthers or frustrates
6 the policy of the law to promote settlement of litigation and,
7 where possible, to reduce the cost of litigation by encouraging
8 cooperation between the parties and attorneys. An award of
9 attorney's fees and costs pursuant to this section is in the nature
10 of a sanction. In making an award pursuant to this section, the
11 court shall take into consideration all evidence concerning the
12 parties' incomes, assets, and liabilities. The court shall not
13 impose a sanction pursuant to this section that imposes an
14 unreasonable financial burden on the party against whom the
15 sanction is imposed. In order to obtain an award under this
16 section, the party requesting an award of attorney's fees and
17 costs is not required to demonstrate any financial need for the
18 award.

12 *Family Code* section 2107(c) states as follows:

13 (c) If a party fails to comply with any provision of this chapter
14 [regarding the disclosure of material facts and information], the
15 court shall, in addition to any other remedy provided by law,
16 impose money sanctions against the noncomplying party.
17 Sanctions shall be in an amount sufficient to deter repetition of
18 the conduct or comparable conduct, and shall include
19 reasonable attorney's fees, costs incurred, or both, unless the
20 court finds that the noncomplying party acted with substantial
21 justification or that other circumstances make the imposition of
22 the sanction unjust.

19 *Family Code* section 1101(b) states as follows:

20 (b) A court may order an accounting of the property and
21 obligations of the parties to a marriage and may determine the
22 rights of ownership in, the beneficial enjoyment of, or access to,
23 community property, and the classification of all property of the
24 parties to a marriage.

23 /////

24 /////

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III.

BACKGROUND FACTS

The parties were married in November 19, 1988, and they had three children during marriage. ¶ 3, F. Cohen dec. Their business, AMP Plus, Inc., dba Elco Lighting ("AMP Plus") was formed during marriage. ¶ 3, F. Cohen dec. Respondent exclusively managed and controlled AMP Plus during marriage through the present date. ¶ 4, F. Cohen dec. and Exhibits "A" and "B".

On October 28, 2008, Petitioner filed the Petition for Dissolution of Marriage, and Respondent was served with the Petition.

In 2009, the parties agreed that there would be no litigation while they attempted a reconciliation. ¶ 7, F. Cohen dec.

In about February 2010, Respondent stopped depositing money into a joint Wells Fargo account that the parties' used to pay their living expenses. To protect herself and the parties' children, Petitioner transferred \$800,000 out of an account in the name of Lighton Properties, LLC, into an account in her name. Respondent then sought and obtained an Order requiring the return of the money to the Lighton Properties account and Petitioner complied with that Order. ¶ 9, F. Cohen dec. The Court also prohibited either party from taking any of that money without a written agreement of the parties or a Court Order. See Tab A, Petitioner's Request for Judicial Notice ("Pet. RJN").

On July 8, 2010, Petitioner filed an Order to Show Cause for child support, spousal support, attorney's fees and costs, and other relief which was set for hearing on August 2, 2010 ("Petitioner's OSC"). Exhibit "C".

On July 16, 2010, Respondent made an *ex parte* application, requesting that the August 2, 2010 hearing on Petitioner's OSC be continued. Exhibit "D". However, the Court ordered that it would make interim support Orders on August 2, 2010, pending a later hearing on Petitioner's OSC which would take place after the parties' responded to outstanding discovery. Additionally, Respondent was ordered to file a complete Income and Expense Declaration before the August 2, 2010 hearing. Tab "B", Pet. RJN.

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1 On July 22, 2010, Respondent filed a Responsive Declaration and an Income and
2 Expense Declaration form. However, the Income and Expense Declaration form that
3 Respondent filed contained a disclaimer and he did not provide financial information about
4 AMP Plus. However, Respondent said that he was going to voluntarily disclose unreported
5 income to the IRS and/or the FTB. Exhibit "E".

6 On July 28, 2010, Petitioner's attorneys received a letter from Respondent's attorney
7 which listed 11 foreign accounts and stated that Petitioner was a signatory on seven of those
8 accounts. See Exhibit "F". However, Petitioner did not know about almost all of these
9 accounts. ¶ 15, F. Cohen dec.

10 On November 5, 2010, Petitioner served her Declaration of Disclosure. Exhibit "EEE".

11
12 IV.

13 BREACHES OF FIDUCIARY DUTY

14 Breach of Fiduciary Duty Number 1 - Respondent's Failure To Disclose
15 Transfers Between Foreign Accounts

16 On September 2, 2010, Respondent's attorneys sent a letter which said that
17 Respondent transferred about \$8.3 million from certain foreign bank accounts to other
18 foreign bank accounts.¹ See Exhibit "G". However, bank statements that Respondent
19 produced in September 2010, show that about \$6.2 million of that money was transferred
20 in March 2010, about six months before Respondent's attorneys sent their
21 September 2, 2010 letter disclosing them. Exhibit "H" and Exhibit "I". Petitioner did not know
22 about those transfers before she received the September 2, 2010 letter. See ¶ 17, F. Cohen
23 dec. Consequently, Respondent failed to disclose that he transferred millions of dollars out
24 of foreign bank accounts for several months.

25 Pursuant to *Family Code* section 2102(a)(1), Respondent's failure to immediately, fully
26 and accurately disclose his transfers of millions of dollars was a breach of fiduciary duty.

27
28 ¹The new bank accounts identified in the September 2, 2010 letter from Respondent's
attorneys were with EFG. Those EFG accounts were identified in the July 28, 2010 letter
from Respondent's attorneys. See Exhibit "F".

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**Breach of Fiduciary Duty Number 2 - Respondent's Failure To
Immediately, Fully And Accurately Disclose Income In Connection With
The August 2, 2010 Hearing Regarding Interim Support**

On August 2, 2010, the Court heard Petitioner's OSC for the purpose of making an interim support Order pending a later hearing. However, the Income and Expense Declaration that Respondent filed did not disclose AMP Plus' income and it contained a disclaimer about the accuracy of the information that it did disclose. Consequently, the Court found that Respondent had not filed an Income and Expense Declaration, and the Court made an interim support Order based on more than one-year old 2008 tax return. See Tab "C" Pet. RJN and Exhibit "E".

That 2008 individual income tax return showed gross income of about \$2.2 million which included AMP Plus' ordinary business income because it is a Subchapter S corporation. Exhibits "J" and "K". Based on the parties' 2008 tax return, the Court ordered Respondent to pay \$14,649 per month of child support and \$36,398 per month of spousal support. See Tab "C" to Pet. RJN.

In November 2011, Respondent testified at his deposition that he caused the inventory to be incorrectly reported on AMP Plus' 2008 tax return to reduce his tax liability. Exhibit "L". Petitioner then filed a Supplement to her Order to Show Cause which quoted Respondent's deposition testimony. See Exhibit "M". About a week later, Respondent changed his deposition testimony. See Exhibit "N".

In May 2011², Respondent delivered draft amended individual income tax returns for 2008, reporting that gross income had increased to about \$11.1 million, with about \$8 million of the approximately \$9 million increase attributable to the increased profit reported on AMP Plus' amended tax return. Exhibits "O" and "P". Respondent also delivered an amended corporate tax return for 2009 which showed that AMP Plus' income for that year was about \$5.3 million. Exhibit "Q".

²Respondent's attorneys also draft amended tax returns in late March 2011, and early April 2011. However, the May 2011 draft amended returns were somewhat different and are apparently the versions that Respondent considers to be final.

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1 Going back to August 2, 2010, Respondent clearly knew that the tax returns that he
2 caused to be filed were inaccurate since he stated on the Income and Expense Declaration
3 that he filed that he was going to disclose unreported income and/or assets to the IRS and
4 the FTB. See Exhibit "E". However, Respondent did not: (a) disclose that the 2008 tax
5 return was inaccurate, (b) accurately disclose income for 2008, or, (c) disclose year 2009
6 income. even though the August 2, 2010 hearing took place eight months after 2009 ended.

7 As the draft amended tax returns that Respondent later delivered show, the Court
8 made support Orders based on a 2008 tax return that under-reported income because of
9 Respondent failure to immediately, fully and accurately disclose information as required by
10 *Family Code* section 2102(c).

11
12 **Breach of Fiduciary Duty Number 3 - Respondent's Failure To**
13 **Immediately, Fully And Accurately Disclose Material Facts And**
14 **Information About Assets, Liabilities, Income And Expenses**

15 In March 2009, Petitioner's first document demand was issued. Category Number 39
16 of that document demand requested all general journals, subsidiary ledgers, and "all other
17 documents reflecting income, expenses and/or assets and liabilities of any . . . closely held
18 corporation . . . in which you and/or your spouse have or have had any interest."
19 See Exhibit "R" [underline added].

20 On September 15, 2010, Respondent served a verified written response in which he
21 represented that he would produce all documents in his possession, custody and control
22 which were responsive to Category Number 39. Exhibit S. At the same time, Respondent
23 produced about 90,000 pages of documents, including documents responsive to category
24 39. ¶ 25, Sturman dec. Respondent did not disclose that there were additional documents
25 that were responsive to Category Number 39. JMS dec.

26 In March 2011, Petitioner's second document demand was issued. It requested
27 updated general ledgers, and documents showing AMP Plus' accounts payable, accounts
28 receivable and inventory. See Exhibit "T".

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1 In May 2011, Respondent filed a Motion for Protective Order regarding Petitioner's
2 second document demand.

3 On July 2011, Respondent's Motion for Protective Order was denied and he was
4 ordered to produce all documents that he had withheld that were responsive to Petitioner's
5 second document demand. See Tab D to Pet. RJN.

6 On August 26, 2011, Respondent produced 269 boxes of documents in response to
7 Petitioner's second document demand. Those boxes contain about 1.2 million pages,
8 including hundreds of thousands of pages of documents reflecting the income and expenses
9 and/or assets and liabilities of AMP Plus from January 1, 2005 to September 15, 2010.
10 See ¶ 19, Deurksen dec. and Exhibit "U"

11 In other words, almost one year after Respondent supposedly produced all of the
12 documents in his possession, custody and control responsive to category 39 of Petitioner's
13 first document demand, he produced about 1.2 million additional pages of documents
14 regarding the "income and expenses and/or the assets and liabilities" of AMP Plus.

15 As set forth in the attached Declaration of William Duerksen, CPA/ABV, during the
16 year that Respondent withheld those documents, Petitioner's forensic accountants needed
17 those documents to determine the parties' incomes, to value the parties' community
18 business, to determine whether draft tax returns that Respondent had his tax accountant
19 prepare were accurate, and for other reasons.

20 Respondent's failure to disclose that he had those documents and to produce those
21 documents in response to discovery was a violation of his obligation to give Petitioner "equal
22 access" to those documents "upon request" as required by *Family Code* section 1100(e), as
23 well as his overall fiduciary duties to provide her with material facts and information
24 concerning the parties' community assets. See *Family Code* sections 721 and 2100 et seq.

25 /////

26 /////

27 /////

28 /////

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**Breach of Fiduciary Duty Number 4 - Respondent's Failure To
Immediately, Fully And Accurately Disclose That He Took About \$815,000
Of Community Money To Pay His Year 2009 Tax Liability**

On September 15, 2010, Respondent served his Preliminary Declaration of Disclosure, including a Schedule of Assets and Debts in which he represented that there was approximately \$2.2 million held in accounts in the United States, including \$925,084 in East West account xxx2336, with those funds "held in reserve for the Whitestone Jewels, LLC litigation." ("the Whitestone account") See Exhibit "V".

On October 4, 2010, Respondent's attorneys sent documents to Petitioner's attorneys that they said Petitioner would need to file her year 2009 separate tax return. See Exhibit "W". That was the only notice that Petitioner received that Respondent was filing his own year 2009 income tax return. See ¶ 19, F. Cohen dec.

On October 15, 2010, Respondent delivered his year 2009 tax returns which showed that he owed about \$625,00 for Federal income taxes and \$176,000 for California income taxes. See Exhibit "X". Respondent did not disclose whether he paid those tax liabilities and, if so, the source of the payments. ¶ 20, F. Cohen dec.

On November 16 and 17, 2010, Respondent was deposed and he testified that he took \$615,000 from the Whitestone account and \$200,000 from AMP Plus to pay his year 2009 taxes. Respondent also testified that he had not disclosed to Petitioner that he had taken that money and used it to pay his year 2009 taxes. See Exhibit "Y".

Respondent's failure to disclose to Petitioner that he was taking \$615,000 from the Whitestone account plus another \$200,000 from AMP Plus to pay his year 2009 taxes was a breach of his fiduciary duties because he failed to immediately, fully and accurately update the financial information that he previously provided.³ See *Family Code* §2102(b).

³Respondent also violated the Automatic Temporary Restraining Orders. However, that is a different issue.

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1 **Breach of Fiduciary Duty Number 5 - Respondent's Failure To Give**
2 **Petitioner "Equal Access" To The Books And Records of AMP Plus**
3 **"Upon Request"**

4 On November 24, 2011, Petitioner served a Demand for Inspection and Copying of
5 Accounting Books and Records, and Corporate Minutes Pursuant to *Corporations Code*
6 Section 1601 and *Schnabel v. Superior Court* (1993) 5 Cal.4th 704. See Exhibit "Z. That
7 Demand notified Respondent that Petitioner and/or her representatives would appear at
8 AMP Plus on December 2, 2010 to inspect and copy the business' accounting books and
9 records, as well as its corporate minutes. The Demand also explained that the purpose of
10 the inspection was to determine the value of the business, determine Respondent's income
11 for purposes of support, determine what happened to funds held in bank accounts, and
12 determine what adjustments needed to be made to correct the inaccurate tax returns that
13 Respondent caused to be prepared and filed. *Id.*

14 When the Demand was issued, Petitioner was attempting to obtain documents before
15 her Reply was due in connection with Petitioner's OSC. See ¶ 37, Sturman dec. However,
16 Respondent objected and he refused to allow an inspection on December 2, 2010, saying
17 that he would only make the community business' books and records available to Petitioner:
18 (a) on Sundays, (b) if she provided the names, "affiliations," addresses and contact numbers
19 for each person who would be present, (c) if there was a limit on the number of people that
20 Petitioner would bring to AMP Plus, and, (d) Petitioner had to state, in advance "exactly what
21 records [she] requests be made available."⁴ See Exhibits "AA" and "BB".

22 As a result of Respondent's objection and the limits he imposed, Petitioner was not
23 able to inspect and copy AMP Plus' books, records and corporate minutes before her Reply
24 was due, and Respondent breached his fiduciary duty to give Petitioner "equal access" to
25 those books and records "upon request" as unambiguously required by *Family Code* section
26 1100(e), as well as "access at all times" as required by *Family Code* section 721(b).

27
28 ⁴Respondent probably recognizes that Petitioner, non-managing spouse, cannot
identify the exact documents that are to be inspected and copied at the community business
that Respondent manages.

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**Breach of Fiduciary Duty Number 6 - Respondent's Failure To Disclose
Year 2010 Income At The January 2011 Hearing Regarding Support**

On January 6 and 12, 2011, at the hearing on Petitioner's OSC regarding support, Respondent failed to disclose year 2010 financial information regarding AMP Plus. That caused the Court to make support Orders based on AMP Plus' year 2009 income tax return. See Tab E to Pet. RJN.

About five months later, Respondent filed a Motion asking the Court to set aside the January 2011 support Orders, hold a new trial regarding support, reconsider its support Orders or, in the alternative, modify its support Orders. However, in that Motion, Respondent disclosed that AMP Plus' year 2009 income was about \$1 million higher than he previously reported, meaning that the January 2011 support Orders were based on a tax return that under-reported AMP Plus income. See Exhibit "CC".

What this means is that Respondent failed to disclose year 2010 income at all and he inaccurately reported year 2009 income. Both of those things were breaches of Respondent's fiduciary duty. See *Family Code* section 2102(c).

**Breach of Fiduciary Duty Number 7 - Respondent's Failure To Disclose
That He Paid A Substantial Amount Of His Year 2010 Estimated Taxes
When The Court Ordered That Both Parties Could Withdraw Community
Funds For That Purpose**

On January 6, 2011, Petitioner made an *ex parte* application to request that money be distributed from foreign accounts to pay her 2009 taxes, her 2010 estimated taxes and her anticipated 2011 taxes. See Exhibit "DD".

On January 12, 2011, the Court ordered that certain monies would be used to pay Petitioner's year 2009 tax liability. See Tab "E", Pet. RJN (page 15, line 24 - page 16, line 5).

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1 With regard to Petitioner's 2010 estimated tax liability, Respondent's attorney argued
2 that there should be no distributions from foreign accounts because the amount of the
3 estimated tax liability had not been determined and he implied that Respondent had not paid
4 any year 2010 estimated tax payments.

5 **THE COURT:** But we know what the estimated payment is, and
6 the Respondent is going to have the same problem; right?

7 **MR. JAFFE:** Yes, and no money to pay it.

8 **THE COURT:** So unless funds are taken from one of the
9 overseas accounts to pay them --

10 **MR. JAFFE:** At this point, on this date, we're speculating what
11 those amounts are going to be.

12 See Exhibit "EE".

13 When Respondent's attorney made that argument, Respondent was seated right next
14 to him at counsel table.

15 Despite Respondent's attorney's argument against distributing money to pay 2010
16 estimated taxes, the Court ordered that *both* parties could "take from the foreign
17 accounts...[an amount]...sufficient to pay the estimated taxes at 110 percent on the 2010
18 income." See Exhibit "FF".

19 On April 29, 2011, Respondent produced documents showing that he paid \$600,000
20 towards his year 2010 estimated taxes in December 2010. See Exhibits "GG" and "HH".
21 That means the month before Respondent's attorney represented to the Court that
22 Respondent could not determine or pay his estimated taxes, Respondent had already paid
23 \$600,000 of his estimated tax liability and he sat silently while his attorney made an
24 inaccurate argument that the Court relied on when allowing *both* parties to take money from
25 foreign accounts to pay year 2010 estimated taxes.

26 /////

27 /////

28 /////

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Respondent's failure to cause his attorney to disclose that he had already paid a substantial amount of his year 2010 estimated tax liability was a breach of fiduciary duty.⁵ See Family Code §2102(b) and (c).

**Breach of Fiduciary Duty Number 8 - Respondent's Failure To Disclose
The Source Of His Support Payments**

In Respondent's September 15, 2010 Schedule of Assets and Debts, he represented that there were 12 foreign bank accounts⁶ holding a total of about \$46 million. Approximately \$4.1 million of that money was held in two accounts in the name of Seohyun International, Ltd., which Respondent stated was a "non-operational foreign [company] formed for the sole purpose of establishing bank accounts" Exhibit "V".

On December 9, 2010, Respondent filed his Responsive Declaration to Petitioner's OSC in which he, his former forensic accountant, and his tax attorney testified that the accounts held in the name of Seohyun International, Ltd., could only be used to pay taxes, interest and penalties.⁷ Exhibit "II".

⁵At the June 27, 2011 hearing on Respondent's Motion to Vacate and Enter New Orders, for new trial, for reconsideration or for modification, the Court reduced the amount that Petitioner was allowed to take to pay year 2010 taxes. When the Court asked Respondent whether he owed anything for year 2010 taxes, he testified that he did not remember, and the Court did not allow him to withdraw money for year 2010 taxes. In reality, Respondent's year 2010 tax return shows that he is to receive a refund.

⁶Respondent's Schedule of Assets and Debts listed 19 foreign accounts. Three of the accounts were "closed" and four of the accounts had zero balances.

⁷On January 6, 2011, the Court disqualified Respondent's tax attorney, Mr. Perez, from testifying against Petitioner because he formerly represented Petitioner, the former matter and the present matter were substantially related, and Mr. Perez was taking a position adverse to Petitioner. See Tab E to Pet. RJN.

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1 On January 12, 2011, the Court made guideline child and spousal support Orders.
2 However, it did not make Orders regarding fees and costs because it wanted evidence about
3 the amount of money that would be available after taxes, interest and penalties were paid.
4 Since Respondent's attorney represented that draft amended tax returns would be delivered
5 within two weeks, Petitioner's request for fees and costs was supposed to be heard within
6 45 days.⁸ See Tab "E" to Pet. RJN.

7 In January 2011, February 2011, March 2011, April 2011 and May 2011, Respondent
8 paid child and spousal support and Petitioner believed that Respondent was paying support
9 from his income. See ¶ 28, F. Cohen dec. However, on June 20, 2011, Respondent filed
10 a declaration from his forensic accountant stating, in part, that the balance in AMP Plus'
11 foreign accounts dropped from about \$4.1 million to approximately \$1.6 million, largely
12 because Respondent used that money to pay support. See Exhibit "JJ".

13 On July 27, 2011, Respondent's attorney incorrectly argued that Respondent had
14 "always" distinguished between foreign personal accounts and foreign business accounts,
15 suggesting that it was appropriate for Respondent to pay support from foreign business
16 accounts. See Exhibit "KK".

17 If Respondent was truthful when he testified that he testified that the \$4.1 million in
18 Seohyun's accounts was only available to pay taxes, interest and penalties, Respondent
19 breached his fiduciary duties by taking some or all of that money to pay support without
20 disclosing those withdrawals to Petitioner. See *Family Code* §2102.

21 If Respondent was not truthful when he testified that the \$4.1 million in Seohyun's
22 accounts was only available to pay taxes, interest and penalties, he also breached his
23 fiduciary duties to Petitioner by failing to "accurately" disclose material facts and information
24 to her. See *Family Code* §2102.

25
26
27 ⁸In fact, Respondent did not provide draft amended tax returns within two weeks, i.e.,
28 by January 24, 2011. On March 7, 2011, Respondent's attorney represented to the Court
that the IRS' OVDI program made that impossible. However, the OVDI was not announced
until February 8, 2011, nearly two weeks after Respondent's tax returns were supposed to
be delivered. Therefore, the OVDI did not prevent Respondent from delivering amended tax
returns within two weeks.

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Breach of Fiduciary Duty Number 9 - Respondent's Failure To Disclose

The Amount Of Professional Fees That He Incurred And Paid

In May 2011, Respondent filed a Motion to vacate and enter new support Orders, for a new trial, for reconsideration and/or to modify the Court's support Orders. At the same time, he filed an Income and Expense Declaration. See Exhibit "LL".

In June 2011, Petitioner filed her Responsive Declaration to Respondent's Motion and she also filed an Income and Expense Declaration stating that she had incurred with Kolodny & Anteau, with her forensic accountants and with her former Family Law attorneys. See Exhibit "MM".

On June 27, 2011, Respondent's attorney argued that Respondent's disclosure that AMP Plus had about \$1 million more of income in 2009 than was shown on the 2009 tax return used by the Court to make support Orders showed that Respondent is forthright. Ironically, Respondent's Income and Expense Declaration did not disclose that he paid: (a) \$103,000 to his former Family Law attorneys at Wasser, Cooperman & Carter [See Exhibit "E"], (b) \$250,000 to his former forensic accountants at Taylor and Lieberman [Exhibits "NN" and "OO"], and, (c) about \$73,000 to his current forensic accountants at Gursey Schneider [Exhibits "PP" and "QQ"].⁹

In this instance, Respondent's failure to fully and accurately disclose the professional fees that he incurred and paid, as well as the source of the payments was a breach of his fiduciary duties. See *Family Code* §2102(c).

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⁹As the Exhibits show, Petitioner issued deposition subpoenas to obtain this information. The amount sets above were as of the June 27, 2011 hearing, however Respondent paid \$210,000 to Gursey, Schnider as of October 13, 2011. See Exhibit "QQ".

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**Breach of Fiduciary Duty Number 10 - Respondent's Failure To Disclose
The Documents Supporting The Adjustments Shown On His Tax
Accountant's Work Papers**

On May 20, 2011, Respondent delivered draft amended tax returns for AMP Plus, as well as the work papers from the accountant who prepared those tax returns. See Exhibit "RR". Those work papers showed that there were over 400 adjustments to the original returns that total about \$47.7 million and that are based on representations from Respondent. See ¶ 17, Duerksen dec. Despite the huge amount of those adjustments, Respondent did not disclose how they were calculated or the documents, if any, that he used to calculate the adjustments.

In June 2011, when Petitioner filed her Responsive Declaration to Respondent's Motion to Vacate and Enter a New Support Order, she included a declaration from her forensic accountant to explain that Petitioner could not determine whether the amended tax returns were correct without knowing, among other things, the basis for the adjustments that Respondent had his tax accountant make. See Exhibit "SS".

In August 2011, Petitioner's attorneys sent a letter explaining that Petitioner can not determine whether the draft amended tax returns are accurate and, therefore, whether she should sign them without knowing how the adjustments were determined. See Exhibit "TT". Petitioner's attorneys also sent another letter asking Respondent to disclose the documents, if any, that he used when determining the adjustments. See Exhibit "UU".

At about the same time, Petitioner issued her a seventh document demand to obtain the documents, if any, that Respondent used when telling his tax accountant to make over 400 adjustments to the original tax returns that total about \$47.7 million. Almost every category of the seventh document demand addressed a specific adjustment shown on the work papers from Respondent's tax accountant. Exhibit "VV."¹⁰

¹⁰The first seven or eight categories in the seventh document demand were not requests for documents related to the adjustments made by Respondent's accountant.

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1 On August 26, 2011, Respondent delivered approximately 1.2 million pages of
2 documents to a storage facility pursuant to an Order denying his motion for protective Order
3 and requiring him to produce all documents that he withheld that were responsive to demand
4 number 2 to the extent that they were previously withheld. Exhibit "WW"; see
5 also Exhibit "U". Petitioner's attorney then noticed Respondent's deposition for the storage
6 facility because they had questions about the organization and completeness of the
7 documents. Exhibit "XX".

8 On September 3, 2011, Petitioner also made an ex parte application to prevent
9 Respondent from withdrawing the approximately 1.2 million pages because he started to
10 threaten that he would remove those documents three days after they were delivered.
11 Exhibit "YY." In opposing that ex parte application, Respondent's attorney argued that it was
12 not necessary to depose Respondent to find out what documents, if any, supported the
13 adjustments to the tax returns because Respondent was going to disclose that information
14 in response to Petitioner's seventh document demand. Exhibit "ZZ."

15 However, on October 21, 2011, Respondent served a written response to the
16 document demand in which he repeatedly stated that the documents he used when making
17 adjustments to tax returns are in approximately the 1.2 million pages that he produced on
18 August 2011. Exhibit "AAA". In other words, instead of producing the documents showing
19 the documents, if any, that he used when telling his tax accountant to make \$47.7 million
20 worth of adjustments to tax returns, Respondent told Petitioner that she had to go find those
21 needles in a haystack of about 1.2 million pages of documents.

22 Petitioner's attorney then sent a meet-and-confer letter explaining that Respondent's
23 written response was legally inappropriate, and asking for a written response that complies
24 with the *Code of Civil Procedure*. Exhibit "BBB". Respondent's attorney sent a letter
25 claiming that Respondent had no legal obligation to do anything more than what he did, but
26 agreeing that Respondent would send the documents to Petitioner over the next month or
27 two. Exhibit "CCC". However, Respondent would not sign a Stipulation and Order requiring
28 him to produce those documents by a date certain. Exhibit "DDD".

1 Since Petitioner cannot rely on Respondent to voluntarily provide these documents
2 - which her attorney has been specifically requesting since mid-August 2011 - she intends
3 to file a Motion to Compel because of Respondent's failure to provide Code compliant
4 discovery responses and his subsequent failure to enter into a Stipulation and Order which
5 will require him to deliver the documents by a date certain.

6 For purposes of this Motion, Respondent's failure to disclose material, facts and
7 information showing the basis, if any, for more than 400 adjustments to tax returns, totaling
8 about \$47 million is a breach of fiduciary duty. See *Family Code* §§721, 1100, and 2102.

9
10 V.

11 CONCLUSION

12 Respondent possesses and controls almost all of the financial information regarding
13 the parties' assets, liabilities, income and expenses.

14 That is the reason that Petitioner has informally requested that Respondent provide
15 material facts and information about those subjects, that is the reason that Petitioner has
16 propounded discovery about those subjects, that is the reason that almost all of the financial
17 information in this case has come from Respondent and that is the reason that Respondent
18 was the party who had draft amended tax returns prepared.

19 Here, in violation of his fiduciary duties, Respondent has repeatedly failed to disclose
20 material facts and information to Petitioner, and she has repeatedly been prejudiced.
21 Support Orders have been made based on tax returns that under-reported income, and
22 Respondent knew or should have known that the tax returns were inaccurate. Respondent
23 has refused to give Petitioner "equal access" to the books and records of the community
24 business "upon request." Respondent has failed or refused to disclose the basis for millions
25 of dollars of adjustments that he had his tax accountant make when preparing draft amended
26 tax returns, making it impossible for Petitioner to determine whether those draft amended
27 tax returns are accurate. Respondent's failure to provide documents in response to
28 discovery has created a situation in which Petitioner's forensic accountants have been

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1 without documents and other information that they need to determine income available for
2 support, to value the parties' business, and provide many other important services to
3 Petitioner. Respondent has falsely stated that money in foreign accounts could only be used
4 to pay taxes, interest and penalties when he wanted to prevent Petitioner from accessing
5 that money, then he used that same money to pay support, i.e., for a purpose other than
6 paying taxes, interest and penalties.¹¹

7 Petitioner cannot settle the case or even issues within the case without the material
8 facts and information that Respondent possesses.


9 Petitioner cannot determine what happened to the \$4.1 million that in accounts in the
10 name of Seohyun that Respondent initially claimed could only be used to pay taxes,
11 penalties and interest, but that he later used to pay support.

12 Respondent has breached his fiduciary duties. Respondent has frustrated the policy
13 of the law to promote settlement and decrease litigation costs. Respondent should be
14 sanctioned, he should be ordered to account for money deposited into and taken out of
15 foreign accounts, and he should be ordered to account for money that he has paid for
16 professional fees.

17
18 DATED: November 16, 2011

KOLODNY & ANTEAU

19
20 By:


JEFF M. STURMAN
State Bar No. 177695
Attorneys for Petitioner,
FARIBA COHEN

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27 ¹¹Petitioner believes that Respondent has used money from foreign accounts to pay
28 support based on the June 20, 2011 Declaration of Rosemarie Reed, CPA, and the
arguments made by Respondent's attorney on June 27, 2011. However, Petitioner does not
actually know how Respondent used money in foreign accounts, and that is the basis for the
request that he be ordered to give an accounting.

IN RE THE MARRIAGE OF COHEN

CASE NO. BD 495 060

2011-11-16 MPA - Mtn re BOFD Sanctions & Accounting(b).676.wpd 2011-08-22 10:29 jad

PAGE 24

MEMORANDUM OF POINTS AND AUTHORITIES

DECLARATION OF FARIBA COHEN

I, FARIBA COHEN, declare as follows:

1. I am the Petitioner in the within action.

2. I make and submit this Declaration in connection with my Motion regarding breach of fiduciary duty.

3. Respondent, Saeed Cohen, and I married on November 19, 1988. We had three children during marriage - Ryan (age 21), Brandon (age 18) and Lauren (age 13). In about 1991, Saeed started operating our business, AMP Plus, Inc., dba Elco Lighting.

4. During marriage, Saeed managed and controlled AMP Plus, as well as other our other businesses and investments. For example, Saeed managed and controlled Lighton Properties, LLC, which owns the property were AMP Plus' does business. I was and I continue to be a part-time State Farm insurance agent. During marriage, most of my time was devoted to being a full-time mother and homemaker. I did not manage and control AMP Plus or our other businesses and investments.

5. During marriage Saeed told me very little about AMP Plus' income, assets, debts and liabilities. He also told me very little about the income, assets, debts and liabilities of our other businesses and investments.

6. On October 27, 2008, I caused the Petition for Dissolution of Marriage to be filed. About that time, I had the Summons and the Petition served on Saeed. However, we continued to live together with our children in our house in Beverly Hills.

7. In about March 2009, I caused my former attorneys at Trope and Trope to stop litigating this Family Law after Saeed told me that he wanted to save our marriage. I believed that it would be best for our children to save our marriage if possible and I wanted to give Saeed a chance to prove that he was sincere about reconciling.

8. Before and after March 2009, I wrote checks for living expenses from a Wells Fargo account in both Saeed's and my name.

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IN RE THE MARRIAGE OF COHEN

CASE NO. BD 495 060

2011-11-16 Declaration of F Cohen Re Breach of Fiduciary Duty.wpd 2011-10-05 13:37 JMS

PAGE 1

DECLARATION OF FARIBA COHEN

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1 9. On February 24, 2010, I learned that checks that I wrote from our joint
2 Wells Fargo account were returned due to insufficient funds. Saeed had not told me that he
3 was going to stop depositing money into that account.

4 10. On February 26, 2010, Saeed told me that he stopped depositing money into
5 our joint Wells Fargo account and that he was going to stop paying the mortgage, and allow
6 our home to go into foreclosure. Saeed said that the alternative was for me to come up with
7 money to place into the joint account. Because I was worried that Saeed would financially
8 cut me off and I wanted to have some security for our children and myself, I transferred
9 \$800,000 from a different Wells Fargo account into an account in my name.

10 11. On March 5, 2010, Saeed made an *ex parte* application and the Court ordered
11 that the \$800,000 was to be returned to the Lighton Properties Wells Fargo account, and not
12 withdrawn absent a written agreement or a Court Order. I then caused the money to be
13 transferred back into the Lighton Properties Wells Fargo account.

14 12. Around the end of April 2010, I retained Kolodny & Anteau, and I had them
15 substituted into this case.

16 13. On July 8, 2010, I caused an Order to Show Cause to be filed, largely to obtain
17 Orders for child support, spousal support, and attorney's fees and costs. I was not receiving
18 money from AMP Plus, Lighton Properties, or from the other businesses and investments
19 that Saeed controlled during marriage.

20 14. On July 22, 2010, I received a copy of an Income and Expense Declaration,
21 and I recognized the signature on that document as Saeed's signature because I saw him
22 sign his name hundreds of times during our marriage. A true and correct copy the Income
23 and Expense Declaration that I received and reviewed on June 22, 2010 is attached to
24 Petitioner's Compendium of Exhibits as **Exhibit "E"** and incorporated herein. I reviewed that
25 Income and Expense Declaration but it did not provide information about AMP Plus' income,
26 assets, debts, expenses, profit or loss for 2009 or 2010. I also had not received that
27 information from Saeed in another way.

28 /////

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15. On July 28, 2010, I received a copy of a letter from Jaffe and Clemens which I reviewed. A true and correct copy of that letter is attached to Petitioner's Compendium of Exhibits as **Exhibit "F"** and incorporated herein. Before receiving that letter, I did not know about almost all of the accounts listed in the letter.

16. On August 2, 2010, I was in Court for the hearing on my Order to Show Cause when the Court made support Orders based on our 2008 tax return. Saeed had not provided me with information about AMP Plus' year 2008 finances when he told me to sign either the our year 2008 tax return and I relied on him to have an accurate tax return prepared because Saeed managed and controlled the businesses that generated almost all of our income. When the Court made the August 2, 2010 support Orders, based on our 2008 tax return, I believed that it reported all of our income. I would have told the Court that our 2008 tax return under-reported our income if had known that it did.

17. On September 2, 2010, I received a copy of a letter from Jaffe and Clemens which I reviewed. A true and correct copy of that letter is attached to Petitioner's Compendium of Exhibits as **Exhibit "G"** and incorporated herein. Before receiving that letter, Saeed had not told me that he transferred \$8.3 million between foreign accounts and I did not know of the accounts that he transferred money to.

18. On September 15, 2010, I received a copy of a Schedule of Assets and Debts and I recognized the signature on that document as Saeed's signature. A true and correct copy the Schedule of Assets and Debts that I received and reviewed on September 15, 2010 is attached to Petitioner's Compendium of Exhibits as **Exhibit "V"** and incorporated herein.

19. On October 4, 2010, I received a copy of a letter from Jaffe and Clemens which I reviewed. A true and correct copy of that letter is attached to Petitioner's Compendium of Exhibits as **Exhibit "W"** and incorporated herein. Before receiving that letter, Saeed did not tell me that he was going to file a separate year 2009 tax return and I did not know that I would need to file my own tax return for 2009. After I received that letter, I had my own year 2009 tax return prepared and I relied on the documents that I received with Jaffe and Clemens' October 4, 2010 letter because I did not have that information, including the year

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1 2009 financial information for AMP Plus. I had my accountants report one-half of the AMP
2 Plus' year 2009 income on my year 2009 tax return based on the information that I received
3 with Jaffe and Clemens' October 4, 2010.

4 20. On October 15, 2010, I received a copies of Saeed's Federal and state tax
5 returns from Jaffe and Clemens. A true and correct copy of a portion of the tax returns is
6 attached to Petitioner's Compendium of Exhibits as **Exhibit "X"** and incorporated herein.
7 I did not know if Saeed paid his year 2009 taxes as he did not tell me whether he made
8 those payments.

9 21. On November 16 and 17, 2010, I was at Kolodny & Anteau when my attorney,
10 Mr. Sturman, took Saeed's deposition and he testified that he took \$615,000 from the
11 "Whitestone account" and \$200,000 from AMP Plus to pay his year 2009 taxes. Before I
12 heard that testimony, Saeed had not told me that he had taken money out of the
13 "Whitestone account" to pay his year 2009 income taxes or for any other purpose. This was
14 the first time that Saeed told me that he had taken money out of AMP Plus to pay his year
15 2009 income taxes. Saeed also had not told me that he would transfer any of the money in
16 the Whitestone account or from AMP Plus to me so that I would have that I could use that
17 money to pay my year 2009 taxes.

18 22. In November 2010 and December 2010, I wanted my attorneys and forensic
19 accountants to inspect and copy AMP Plus' books and records before the hearing on my
20 Order to Show Cause. However, on December 1, 2010, I received a copy of a letter and
21 another document from Jaffe and Clemens. True and correct copies of the letter and the
22 document are attached to Petitioner's Compendium of Exhibits as **Exhibits "AA" and "BB"**
23 and incorporated herein. I did not have access to AMP Plus' books and records before
24 December 15, 2010; when I had to file my Reply for my Order to Show Cause which was
25 supposed to be heard on December 22, 2010.

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23. On or about December 9, 2010, I received a copy of Saeed's Responsive Declaration to my Order to Show Cause and I read Saeed's declaration dated December 9, 2010 in which he said the following in paragraph 29.c.:

Two of the foreign bank accounts (Mega International Bank ending in #1960 and Shanghai Commercial Bank ending in #9478) have been classified in the 2009 returns as accounts belonging to AMP Plus, Inc., even though they stand in the name of a different, non-operational foreign business entity, Seohyun International Ltd. . . . **The combined balance in these accounts at December 31, 2009 was approximately \$4.1 million. Thus, although the 2009 AMP Plus, Inc., tax return reflects a cash balance in AMP Plus, Inc. of approximately \$4.8 million, the large majority of those funds were and remain overseas and are not accessible to me, since my understanding is that they are subject to the same taxes, interest and penalties as the other foreign accounts.** [bold added]

Page 11, line 25 - page 12, line 11 of the Declaration of Saeed Cohen dated December 9, 2010, is attached to Petitioner's Compendium of Exhibits as **Exhibit "II"**, along with other portions of Respondent's Responsive Declaration.

24. On December 22, 2010, I went to Court with my attorneys, Mr. Kolodny and Mr. Sturman. At that time, I heard Judge Nelson Order that the hearing on my Order to Show Cause would start on January 6, 2011.

25. On January 6 and 12, 2011, I was in Court for the hearing on my Order to Show Cause. I did not have year 2010 financial information for AMP Plus other than the documents that Saeed produced to my attorneys or to my forensic accountants.

26. On January 12, 2011, I was present when the Court made support Orders based on AMP Plus' year 2009 tax return. At that time, I did not know if AMP Plus' year 2009 tax return was correct because I did not manage and control the business.

27. On January 12, 2011, I was present when Judge Nelson ordered that Saeed and I could each withdraw an amount of money from foreign accounts that was equal to 110% of our year 2009 tax liability in order to pay year 2010 estimated taxes. I did not hear Saeed say that he had paid any of his estimated taxes for 2010. However, I did hear Saeed's attorney, Mr. Jaffe, say that Saeed was unable to pay his estimated taxes.

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28. In January 2011, February 2011, March 2011, April 2011 and May 2011, I received support payments from Saeed. I believed those payments were from Saeed's income, not from foreign accounts, based on Saeed's December 9, 2011 declaration which said that we could not use the money in AMP Plus' foreign accounts for any purpose other than paying taxes, penalty and interest.

29. On or about May 17, 2011, I received Saeed's Motion to Vacate and Enter New Order, for New Trial, for Reconsideration, To Re-Open Evidence and/or for Modification of the Court's January 2011 Support Orders. I also received Saeed's Income and Expense Declaration dated May 14, 2011. I reviewed those documents at or about the time that I received them.

30. On or about May 20, 2011, I received a copy of a letter from Saeed's attorneys and amended joint tax returns. True and correct copies of the letter is attached to Petitioner's Compendium of Exhibits as **Exhibit "RR"** and incorporated herein. I did not know whether the amended joint tax returns were correct.

31. In June 2011, I caused my Responsive Declaration and my Income and Expense Declaration to be filed and served.

32. On or about June 20, 2011, I received and reviewed Saeed's Reply for his Motion to Vacate which included the Declaration of Rosemarie Reed, CPA which said:

41. The above figures do not include \$4.1 million of cash held in foreign accounts in names other than AMP Plus, Inc. As of today, those cash balances have been reduced to \$1.578 million in large part to enable Respondent to fund his support obligation to Petitioner.

Attached hereto as **Exhibit "JJ"** and incorporated herein is a true and correct copy of page 8 of the Declaration of Rosemarie Reed, CPA, dated June 20, 2011. When I read paragraph 41 of Ms. Reed's declaration, that was the first time that I learned that Saeed paid support to me from foreign accounts that he previously stated could only be used to pay taxes, penalties and interest.

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1 33. To date, I have not signed the proposed amended joint tax returns that I
2 received in May 2011, because I still do not know whether they are correct.

3 34. The hereinabove set forth facts are true and correct and are known to me by
4 reason of my personal involvement in the activity, my personal observation of the event.
5

6 I declare, under penalty of perjury pursuant to the laws of the State of California, that
7 the foregoing is true and correct.

8 Executed this 16th day of November, 2011.

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11 FARIBA COHEN
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DECLARATION OF JEFF M. STURMAN

I, JEFF M. STURMAN, declare as follows:

1. I make and submit this Declaration in connection with Petitioner's Motion for Breach of Fiduciary Duty.

2. I am a partner of Kolodny & Anteau, Petitioner's attorney of record. Since approximately April 2010, I have been the attorney at Kolodny & Anteau who has had primary responsibility for handling this case. Among other things, I have provided the following legal services or had them provided by other attorneys or support staff at Kolodny & Anteau who work under my direction and supervision: (a) prepared letters to Respondent's attorneys and to third parties, (b) reviewed letters that Kolodny & Anteau has received in connection with this case, (c) prepared discovery which was propounded on Petitioner's behalf, (c) prepared discovery responses for Petitioner, (d) reviewed Respondent's discovery responses, (e) prepared *ex parte* applications, oppositions to *ex parte* applications, motions, oppositions to motions, and an order to show cause, and, (f) represented Petitioner at the depositions of third party witnesses.

3. Additionally, I have: (a) taken Respondent's deposition on November 16 and 18, 2010, and on January 26, 2011, (b) represented Petitioner at her deposition on November 8 and 12, 2010, and on January 28, 2011, and, (c) represented Petitioner in Court at *ex parte* applications, at hearings on Motions and at hearings her Orders to Show Cause.

4. Stephen A. Kolodny is Petitioner's lead trial attorney.

5. I prepared the attached Memorandum of Points and Authorities for Petitioner's Motion for Breach of Fiduciary Duty, and I organized this declaration to correspond to the sections in the Memorandum of Points and Authorities. For that reason, this declaration is not chronological. The title of each section below is the same as the titles within the attached Memorandum of Points and Authorities to make it more convenient for the Court to find the paragraphs of this declaration that correspond to sections in Memorandum of Points and Authorities.

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6. I am causing the Exhibits referred to below to be separately submitted as Petitioner's Compendium to her Motion for Breach of Fiduciary Duty. I am also causing many of the Exhibits to be highlighted for the Court's convenience.

Background Facts

7. On November 16, 2010, I was at Kolodny & Anteau. Respondent appeared with Daniel J. Jaffe of Jaffe and Clemens, his attorney or record. On that day, I took Respondent's deposition. Attached to Petitioner's Compendium of Exhibits as **Exhibit "A"** and incorporated herein is a true and correct copy of pages 7-8, and 74 of the Reporter's Transcript of the Deposition of Saeed Cohen taken on November 16, 2010.

8. On December 9, 2010, I received and reviewed Respondent's Responsive Declaration to Petitioner's then pending Order to Show Cause for child support, spousal support, and attorney's fees and costs. Attached to Petitioner's Compendium of Exhibits as **Exhibit "B"** and incorporated herein are true and correct copies of pages 1, 7, 26, 26 and 40 of the Declaration of Saeed "Steve" Cohen dated December 9, 2010 which were attached to that Responsive Declaration.

9. On July 8, 2010, I caused Petitioner's Order to Show Cause for child support, spousal support, attorney's fees and costs, and other Orders to be filed and served. Attached to Petitioner's Compendium of Exhibits as **Exhibit "C"** is a true and correct copy of the face page of that Order to Show Cause. That Order to Show Cause was set for hearing on August 2, 2010.

10. On July 16, 2010, I appeared in Court after I received notice that Respondent would make an *ex parte* application. Attached to Petitioner's Compendium of Exhibits as **Exhibit "D"** are true and correct copies of the face page of the *ex parte* application, the Application for Order form attached thereto and the "Attachment 9 to FL-150" that were part of the *ex parte* application that I received at the courthouse from Respondent's attorneys on July 16, 2010. I opposed Respondent's *ex parte* application.

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11. On July 22, 2010, I received and reviewed Respondent's Responsive Declaration and Respondent's Income and Expense Declaration in connection with the August 2, 2010 hearing on Petitioner's Order to Show Cause. Attached to Petitioner's Compendium of Exhibits as **Exhibit "E"** is a true and correct copy of the Income and Expense Declaration that I received on July 22, 2010. There was no profit and loss statement, or other financial information for AMP Plus included in Respondent's July 22, 2010 Income and Expense Declaration.

12. On July 28, 2010, I received and reviewed a letter from Daniel J. Jaffe at Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "F"** is a true and correct copy of that letter.

**Breach of Fiduciary Duty Number 1 - Respondent's Failure To Disclose
Transfers Between Foreign Accounts**

13. On September 2, 2010, I received and reviewed a letter from Daniel J. Jaffe at Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "G"** is a true and correct copy of that letter.

14. On November 3, 2010, I received a letter and documents from Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "H"** are those documents, as well as declaration certifying the accuracy of the translations of those pages.

15. On November 17, 2010, I was at Kolodny & Anteau. Respondent appeared with Daniel J. Jaffe of Jaffe and Clemens, his attorney or record. On that day, I took Respondent's deposition. Attached to Petitioner's Compendium of Exhibits as **Exhibit "I"** and incorporated herein is a true and correct copy of pages 241-246 of the Reporter's Transcript of the Deposition of Saeed Cohen taken on November 16, 2010.

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**Breach of Fiduciary Duty Number 2 - Respondent's Failure To
Immediately, Fully And Accurately Disclose Income In Connection With
The August 2, 2010 Hearing Regarding Interim Support**

16. On September 15, 2010, I received a letter and a computer disk from Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "J"** are true and correct copies of pages that I caused to be printed from that computer disk.

17. On September 15, 2010, I received a letter and a computer disk from Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "K"** are true and correct copies of pages that I caused to be printed from that computer disk.

18. On November 17, 2010, I was at Kolodny & Anteau. Respondent appeared with Daniel J. Jaffe of Jaffe and Clemens, his attorney or record. Attached to Petitioner's Compendium of Exhibits as **Exhibit "L"** and incorporated herein is a true and correct copy of pages 314-323 of the Reporter's Transcript of the Deposition of Saeed Cohen taken on November 16, 2010.

19. On November 30, 2010, I caused Petitioner's Second Supplement To Her Order To Show Cause Filed July 8, 2010 to be filed and served. Attached to Petitioner's Compendium of Exhibits as **Exhibit "M"** and incorporated herein is a true and correct copy of the face page of Petitioner's Second Supplement, as well as pages 1, 72-79 and 104 of the Declaration of Jeff M. Sturman dated November 30, 2010.

20. On December 8, 2010, I received a letter and another document from Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "N"** are true and correct copies of that letter and the document that arrived with it.

21. On May 20, 2011, I received a letter and documents from Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "O"** and incorporated herein are true and correct copies of the pages that I received which are Bates stamped SC-43626, SC-43629, and SC-43630.

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22. On May 20, 2011, I received a letter and documents from Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "P"** and incorporated herein are true and correct copies of the pages that I received which are Bates stamped SC-41765 through SC-41768.

23. On May 20, 2011, I received a letter and documents from Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "Q"** and incorporated herein are true and correct copies of the pages that I received which are Bates stamped SC-42027 through SC-42020.

Breach of Fiduciary Duty Number 3 - Respondent's Failure To Immediately, Fully And Accurately Disclose Material Facts And Information About Assets, Liabilities, Income And Expenses

24. In about May 2010, Kolodny & Anteau received Petitioner's files from her former attorney, Trope and Trope. I reviewed those files at or about that time. Attached to Petitioner's Compendium of Exhibits as **Exhibit "R"** and incorporated herein is a true and correct copy of a portion of Petitioner's Demand for Production and Inspection of Documents Pursuant to C.C.P. §2031.010 et seq. [Set One], which was included within the files that we received from Trope and Trope.

25. On September 15, 2010, I received and reviewed Respondent's Response to Demand for Production and Inspection of Documents, Set One. Attached to Petitioner's Compendium of Exhibits as **Exhibit "S"** and incorporated herein is a true and correct copy of a portion of that document. I also received a computer disk that I reviewed which had about 90,000 pages of documents on it.

26. On March 10, 2011, I caused Petitioner's Second Demand to Respondent for the Production of Documents for Inspection and Copying to be served. Attached to Petitioner's Compendium of Exhibits as **Exhibit "T"** and incorporated herein is a true and correct copy of a portion of that document.

27. On May 13, 2011, I received Respondent's Motion for Protective Order.

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1 28. On July 6, 2011, I filed and served Petitioner's Responsive Declaration to that
2 Motion for Protective Order.

3 29. On July 25, 2011, I appeared with Petitioner at the offices of ADR in Century
4 City, California, and I represented Petitioner at a hearing on Respondent's Motion for
5 Protective Order. Attorneys Bruce A. Clemens and David B. Farkas or Jaffe and Clemens
6 appeared and they represented Respondent who also present. The Honorable
7 John W. Ouderkirk, Judge *Pro Tempore* regarding discovery, presided over the hearing.

8 30. On August 3, 2011, I received a copy of a document entitled "Ruling on
9 Respondent's Motion for Protective Order and for Sanctions." I caused that Ruling to be filed
10 with the Superior Court. I am causing a true and correct copy that Ruling to be attached to
11 Petitioner's Request for Judicial Notice under Tab D thereof.

12 31. On or about August 24, 2011, David B. Farkas of Jaffe and Clemens told me
13 during a telephone call that Respondent was producing boxes of documents pursuant to
14 Judge Ouderkirk's Ruling to a document storage and copying facility known as Discovery
15 Data Solutions.

16 32. On August 30, 2011, I received a copy of a letter. Attached to Petitioner's
17 Compendium of Exhibits as **Exhibit "U"** is a true and correct copy of the letter that I received
18 on August 30, 2011.

19
20 **Breach of Fiduciary Duty Number 4 - Respondent's Failure To**
21 **Immediately, Fully And Accurately Disclose That He Took About \$815,000**
22 **Of Community Money To Pay His Year 2009 Tax Liability**

23 33. On September 15, 2010, I received Respondent's Preliminary Declaration of
24 Disclosure, including a Schedule of Assets and Debts. Attached to Petitioner's Compendium
25 of Exhibits as **Exhibit "V"** is a true and correct copy of Respondent's Preliminary Declaration
26 of Disclosure, and a portion of the Schedule of Assets and Debts that I received.

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34. On October 4, 2010, I received a letter from Jaffe and Clemens, which had documents with it. Attached to Petitioner's Compendium of Exhibits as **Exhibit "W"** is a true and correct copy of the letter.

35. On October 15, 2010, I received an email with attachments from Sandra P. Mendell of Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "X"** is a true and correct copy of that email and a portion of the documents that were attached to it.

36. On November 17, 2010, I was at Kolodny & Anteau. Respondent appeared with Daniel J. Jaffe of Jaffe and Clemens, his attorney or record. Attached to Petitioner's Compendium of Exhibits as **Exhibit "Y"** and incorporated herein is a true and correct copy of pages 332-340 of the Reporter's Transcript of the Deposition of Saeed Cohen taken on November 16, 2010.

**Breach of Fiduciary Duty Number 5 - Respondent's Failure To Give
Petitioner "Equal Access" To The Books And Records of AMP Plus
"Upon Request"**

37. On November 24, 2010, I caused a document entitled Demand for Inspection and Copying of Accounting Books and Records, and Corporate Minutes Pursuant to *Corporations Code* Section 1601 and *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, to be served at Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "Z"** and incorporated herein is a true and correct copy of that document. I caused that Demand to be issued in order to obtain copies of AMP Plus' books, records and corporate minutes before Petitioner's Reply was due in connection with the hearing on her then pending Order to Show Cause.

38. On November 30, 2010 and December 1, 2010, I received letters from Daniel J. Jaffe at Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "AA"** and incorporated herein are true and correct copies of those letters.

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39. On December 1, 2010, I received a document entitled Respondent's Objection to Petitioner's "Demand for Inspection and Copying of Accounting Books and Records, and Corporate Minutes Pursuant to *Corporations Code* Section 1601 and *Schnabel v. Superior Court* (1993) 5 Cal.4th 704." Attached to Petitioner's Compendium of Exhibits as Exhibit "BB" and incorporated herein are true and correct copies of those letters.

**Breach of Fiduciary Duty Number 6 - Respondent's Failure To Disclose
Year 2010 Income At The January 2011 Hearing Regarding Support**

40. On May 17, 2011, I received a Motion from Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as Exhibit "CC" and incorporated herein are true and correct copies of the face page of the Motion, as well as pages 59, 62 and 64 of the Declaration of Saeed "Steve" Cohen dated May 13, 2011 which was attached to that Motion.

**Breach of Fiduciary Duty Number 7 - Respondent's Failure To Disclose
That He Paid A Substantial Amount Of His Year 2010 Estimated Taxes
When The Court Ordered That Both Parties Could Withdraw Community
Funds For That Purpose**

41. On January 6, 2011, I made an *ex parte* application in Department 60 of the Los Angeles Superior Court. Attached to Petitioner's Compendium of Exhibits as Exhibit "DD" is a true and correct copy of the face page of the *ex parte* application, the Application for Order, and the Attachment 9 to Form FL-310 for that *ex parte* application. [The hearing date on the face page incorrectly states "January 5, 2011."]

42. On January 12, 2011, I was in Court for the second day of hearings on Petitioner's Order to Show Cause filed on July 8, 2010. Attached to Petitioner's Compendium of Exhibits as Exhibit "EE" is a true and correct copy of pages 134 and 135 of the Reporter's Transcript of Proceedings from the January 12, 2011 hearing in this case.

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43. Attached to Petitioner's Compendium of Exhibits as **Exhibit "FF"** is a true and correct copy of pages 139 of the Reporter's Transcript of Proceedings from the January 12, 2011 hearing in this case.

44. On April 29, 2011, Kolodny & Anteau received documents from Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "GG"** and incorporated herein is a true and correct copy of a portion of the documents that we received that day.

45. I caused one page of the documents that Kolodny & Anteau received on April 29, 2011 to be magnified and printed. Attached to Petitioner's Compendium of Exhibits as **Exhibit "HH"** and incorporated herein is a true and correct copy of a that page.

**Breach of Fiduciary Duty Number 8 - Respondent's Failure To Disclose
The Source Of His Support Payments**

46. On December 9, 2011, I received Respondent's Responsive Declaration to Petitioner's then pending Order to Show Cause. Attached to Petitioner's Compendium of Exhibits as **Exhibit "II"** and incorporated herein are true and correct copies of the following portions of that Responsive Declaration: (a) the face page of the Responsive Declaration, (b) pages 2 and 3 of the Memorandum of Points and Authorities which I redacted, (c) pages 1, 7, 10 and 15 of the Declaration of Joseph S. Sweeney, CPA, dated December 9, 2010, which I have redacted, (d) Schedule 6 to the Declaration of Joseph S. Sweeney, CPA, which I have redacted, and, (e) pages 1, 11, 12 and 40 of the Declaration of Saeed "Steve" Cohen dated December 9, 2011, which I have redacted.

47. On May 17, 2011, I received Respondent's Motion to Vacate and Enter New Support Orders, for New Trial, for Reconsideration and/or for Modification.

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1 48. On June 20, 2011, I received Respondent's Reply in connection with his Motion
2 to Vacate and Enter New Support Orders, for New Trial, for Reconsideration and/or for
3 Modification. Attached to Petitioner's Compendium of Exhibits as **Exhibit "JJ"** and
4 incorporated herein are true and correct copies of the face page of that Reply, as well as
5 pages 1, 8, 9 and 16 of the Declaration of Rosemarie Reed, CPA/CFF, dated June 20, 2011.

6 49. On June 27, 2011, I was in Court for a hearing on Respondent's Motion to
7 Vacate and Enter New Support Orders, for New Trial, for Reconsideration and/or for
8 Modification. Attached to Petitioner's Compendium of Exhibits as **Exhibit "KK"** are true and
9 correct copies of pages 50, 51, 61 and 62 of the Reporter's Transcript of the June 27, 2011
10 Proceedings.

11
12 **Breach of Fiduciary Duty Number 9 - Respondent's Failure To Disclose**
13 **The Amount Of Professional Fees That He Incurred And Paid**

14 50. On May 17, 2011, I received Respondent's Motion to Vacate and Enter New
15 Support Orders, for New Trial, for Reconsideration and/or for Modification.

16 51. On May 17, 2011, I received an Income and Expense Declaration from Jaffe
17 and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "LL"** is a true
18 and correct copy of portions of that Income and Expense Declaration.

19 52. On June 14, 2011, I caused Petitioner's Income and Expense Declaration to
20 be filed. Attached to Petitioner's Compendium of Exhibits as **Exhibit "MM"** is a true and
21 correct copy of portions of that Income and Expense Declaration.

22 53. On October 6, 2011, I caused a Deposition Subpoena for Production of
23 Business Records to be issued to the Custodian of Records for Taylor and Lieberman.
24 Attached to Petitioner's Compendium of Exhibits as **Exhibit "NN"** is a true and correct copy
25 of portions of that Deposition Subpoena.

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1 54. On November 1, 2011, I received documents pursuant to that Deposition
2 Subpoena. Attached to Petitioner's Compendium of Exhibits as **Exhibit "OO"** are true and
3 correct copies of Declaration of the Deposition Officer, as well as the documents received
4 in response to the Deposition Subpoena to Taylor and Lieberman.

5 55. On October 6, 2011, I caused a Deposition Subpoena for Production of
6 Business Records to be issued to the Custodian of Records for Gursey Schneider & Co.
7 Attached to Petitioner's Compendium of Exhibits as **Exhibit "PP"** is a true and correct copy
8 of portions of that Deposition Subpoena.

9 56. On November 1, 2011, I received documents pursuant to that Deposition
10 Subpoena. Attached to Petitioner's Compendium of Exhibits as **Exhibit "QQ"** are true and
11 correct copies of Declaration of the Deposition Officer, as well as a portion of the documents
12 received in response to the Deposition Subpoena to Gursey Schneider & Co.

13
14 **Breach of Fiduciary Duty Number 10 - Respondent's Failure To Disclose**
15 **The Documents Supporting The Adjustments Shown On His Tax**
16 **Accountant's Workpapers**

17 57. On May 20, 2011, I received a letter and a computer disk from Jaffe and
18 Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "RR"** is a true and
19 correct copies of the letter that I received.

20 58. On June 14, 2011, I caused Petitioner's Responsive Declaration to
21 Respondent's Motion to Vacate and Enter New Support Orders, for New Trial, for
22 Reconsideration and/or for Modification. Attached to Petitioner's Compendium of Exhibits
23 as **Exhibit "SS"** are true and correct copies of a portion of the Declaration of William
24 Duerksen, CPA/ABV, dated June 14, 2011 which was attached to that Responsive
25 Declaration, as well as Exhibits "KKK" and "LLL" thereto.

26 59. On August 11, 2011, I caused a letter to be sent, via fax, and email to
27 Respondent's attorney, Bruce Clemens. Attached to Petitioner's Compendium of Exhibits
28 as **Exhibit "TT"** is a true and correct copy of that letter.

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60. On August 18, 2011, I caused a letter to be sent, via fax, and email to Respondent's attorney, Bruce Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "UU"** is a true and correct copy of that letter. [I am not attaching the Exhibits referred to in the letter because they are Exhibits "KKK" and "LLL" to the Responsive Declaration that Petitioner filed on June 14, 2011, and both of those Exhibits are attached as part of Exhibit "SS" to Petitioner's Compendium of Exhibits.]

61. On August 19, 2011, I caused Petitioner's Seventh Demand to Respondent for the Production of Documents for Inspection and Copying to be served at Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "VV"** is a true and correct copy of that letter.

62. On August 25, 2011, I received a letter from David Farkas at Jaffe and Clemens which said, in part "[Respondent] will make the documents available for inspection tomorrow, August 26, 2011, beginning at 9:30 a.m. at Data Discovery Solutions, located at 318 West Ninth Street, Los Angeles, California 90015. . . ." Attached to Petitioner's Compendium of Exhibits as **Exhibit "WW"** is a true and correct copy of that letter.

63. On August 30, 2011, I caused a Notice of Taking Deposition of Respondent Saeed Cohen to be served at Jaffe and Clemens. Attached to Petitioner's Compendium of Exhibits as **Exhibit "XX"** and incorporated herein is a true and correct copy of that Notice of Taking Deposition. I noticed Respondent's deposition to take place at Discovery Data Solutions so that I could ask him questions about the organization and location of documents that his attorneys told me that he produced there.

64. On September 7, 2011, I represented Petitioner at a telephonic hearing before the Honorable John W. Ouderkirk, Judge *Pro Tempore* regarding discovery, concerning an *ex parte* application that Petitioner made. Attached to Petitioner's Compendium of Exhibits as **Exhibit "YY"** and incorporated herein is a true and correct copy of Notice of Motion form, the Application for Order form and the Attachment "9" to Form FL-310 that were part of that *ex parte* application. I am not attaching the entirety of that *ex parte* application as an Exhibit.

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65. On September 7, 2011, I received Respondent's Responsive Declaration to Petitioner's *ex parte* application. Attached to Petitioner's Compendium of Exhibits as **Exhibit "ZZ"** and incorporated herein is a true and correct copy of the Responsive Declaration form and a portion of the Declaration of Bruce A. Clemens that was attached to it. I am not attaching the entirety of the Responsive Declaration as an Exhibit.

66. On October 21, 2011, I received Respondent's written response to Petitioner's Seventh Demand to Respondent for the Production of Documents for Inspection and Copying. Attached to Petitioner's Compendium of Exhibits as **Exhibit "AAA"** are true and correct copies of pages 1, 5-10, 295 and 296 of that written response. I caused that written response to be reviewed and determined that Respondent's written responses to requests 8-139, 205-315, and 340-420 stated that "Respondent has complied with this request, and all documents in Respondent's possession, custody or control responsive to this request have been made available to Petitioner for inspection since August 26, 2011, at the Discovery Data Solutions repository . . .," or words to that effect. No information was provided to identify the documents which are responsive to categories 8-139, 205-315, and 340-420 in the document demand.

67. On October 28, 2011, I caused a letter to be sent, via email and fax, to Respondent's attorney. Attached to Petitioner's Compendium of Exhibits as **Exhibit "BBB"** and incorporated herein is a true and correct copy of the letter that I sent.

68. On November 9, 2011, I received a letter from Respondent's attorney. Attached to Petitioner's Compendium of Exhibits as **Exhibit "CCC"** and incorporated herein is a true and correct copy of the letter that I received.

69. On November 9, 2011, I caused a letter to be sent, via email and fax, to Respondent's attorney. Attached to Petitioner's Compendium of Exhibits as **Exhibit "DDD"** and incorporated herein is a true and correct copy of the letter that I sent.

70. I am an attorney duly licensed to practice law in all the Courts of the State of California, in good standing before the State Bar of California; I am a partner of Kolodny & Anteau, attorney of record for the Petitioner in this matter.

1 71. This Declaration is based upon facts within my own personal knowledge or
2 from the contents of documents referred to herein.

3 72. This Declaration is not intended to be, nor should it be construed as being, a
4 waiver of any attorney-client privilege or attorney work product doctrine. The matters set
5 forth herein were stated and/or observed in non-privileged settings and are not the result of
6 privileged work product matters. I have no client authority to waive the attorney-client
7 privilege nor the attorney work product doctrine and I do not intend to do so by anything set
8 forth herein.

9
10 I declare, under penalty of perjury pursuant to the laws of the State of California, that
11 the foregoing is true and correct.

12 Executed this ____ day of November, 2011.

13
14 
15 JEFF M. STURMAN

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DECLARATION OF JAMES A. DOOLEY

I, JAMES A. DOOLEY, declare as follows:

1. I make and submit this Declaration in connection with Petitioner's Motion for Breach of Fiduciary Duty. This Declaration shall relate only to the aforementioned matter.

2. I am one of the attorneys at Kolodny & Anteau who represents Petitioner, Fariba Cohen.

3. On November 5, 2010, I caused Petitioner's Declaration of Disclosure, including her Income and Expense Declaration and her Schedule of Assets and Debts to be served at Jaffe and Clemens, Respondent's attorney. I also caused a Declaration Regarding Declaration of Service of Declaration of Disclosure and Income and Expense Declaration to be filed. Attached to Petitioner's Compendium of Exhibits as Exhibit "EEE" and incorporated herein is a true and correct copy of the Declaration of Service of Declaration of Disclosure and Income and Expense Declaration that I caused to be filed.

4. I am an attorney duly licensed to practice law in the State of California, in good standing before the State Bar of California; I am an associate of Kolodny & Anteau, attorney of record for the Petitioner in this matter.

5. This Declaration is based upon facts within my own personal knowledge or from the contents of documents referred to herein.

6. This Declaration is not intended to be, nor should it be construed as being, a waiver of any attorney-client privilege or attorney work product doctrine. The matters set forth herein were stated and/or observed in non-privileged settings and are not the result of

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1 privileged work product matters. I have no client authority to waive the attorney-client
2 privilege nor the attorney work product doctrine and I do not intend to do so by anything set
3 forth herein.

4
5 I declare, under penalty of perjury pursuant to the laws of the State of California, that
6 the foregoing is true and correct.

7 Executed this 16th day of November, 2011.

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10 JAMES A. DOOLEY

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DECLARATION OF WILLIAM A. DUERKSEN, CPA/ABV, CFE

I, WILLIAM A. DUERKSEN, CPA/ABV, CFE declare as follows:

1. I am a shareholder in the accounting firm, Mayer Hoffman McCann P.C. ("MHM") I make and submit this Declaration in connection with Ms. Cohen's Motion for Breach of Fiduciary Duty. The facts set forth herein are of my personal knowledge and I would competently testify thereto.
2. In September 2010, MHM was retained to perform forensic accounting services for Petitioner, Fariba Cohen. Those services include, but are not limited to, determining both parties' incomes, calculating guideline child support, determining the extent and value of the parties' community and separate assets, determining the amount of claims for credit and reimbursement, and determining each parties' ability to pay attorney's fees and costs. I have been responsible for managing the documents received in this case and also in assisting Mark S. Luttrell, the lead forensic accountant in this case, in analyzing those documents.
3. Scope of Assignment. At the request of Jeff M. Sturman, a partner at Kolodny & Anteau, I prepared this declaration to describe: 1) the documents that MHM has had available when it has provided services to Petitioner, 2) the documents that MHM did not have available when it provided services to Petitioner, 3) the documents that were produced by Mr. Cohen after we submitted declarations, after Mr. Luttrell was deposed and/or after we appeared in Court to testify, and 4) the documents or information that we still do not have.
4. Tax Issues. In September 2010, the month that MHM was retained, we reviewed Ms. Cohen's Order to Show Cause for child support, spousal support, and attorney's fees and costs which was filed July 8, 2010; her

1 Income and Expense Declaration which was filed July 8, 2010; Mr. Cohen's
2 Responsive Declaration dated July 22, 2010; his Income and Expense
3 Declaration dated July 22, 2010; and a partial transcript of an August 2, 2010
4 hearing. In Mr. Cohen's Income and Expense Declaration, he stated that
5 there were unreported foreign accounts and that he was going to voluntarily
6 disclose to the IRS. Therefore, in my opinion, the tax returns received from
7 Mr. Cohen could not be relied upon unless we received other documents or
8 information that would allow us to confirm their accuracy.

9 5. Documents Produced In September 2010. In September 2010 I, and other
10 members of my firm, started reviewing approximately 90,000 pages of
11 documents that MHM received from Kolodny & Anteau and that Mr. Sturman
12 told me were produced in response to Ms. Cohen's Demand for Production
13 and Inspection of Documents [Set One]. Those documents included: (a) Ms.
14 Cohen's and Mr. Cohen's joint individual income tax returns for the years
15 2005, 2006, 2007 and 2008, (b) corporate income tax returns for AMP Plus,
16 Inc., dba Elco Lighting (AMP Plus) for the years 2004, 2005, 2006, 2007, and
17 2008, (c) tens of thousands of pages of general ledgers for AMP Plus' that
18 were in WordPad format that we imported into Excel to make the information
19 useable, and, (d) other documents, e.g., tax returns for other entities. We did
20 not receive documents that would allow us to determine whether the
21 information in the general ledgers of AMP Plus or its tax returns were
22 accurate. For example, we did not receive invoices from AMP Plus' vendors,
23 invoices to AMP Plus' customers, inventory records, a cash receipts and
24 disbursements journal (or some other kind of check register), and many other
25 types of basic accounting documents and records. Nonetheless, in
26 September 2010 and October 2010, MHM spent most of its time reviewing
27 the approximately 90,000 pages of documents so that we could analyze those
28 and prepare a declaration to be filed on October 21, 2010, 16 Court Days

1 before the November 15, 2010 hearing on Ms. Cohen's Order to Show
2 Cause.

3 6. Mr. Cohen's Schedule of Assets and Debts. On September 24, 2010, I also
4 received and reviewed Mr. Cohen's Schedule of Assets and Debts dated
5 September 15, 2010. That Schedule listed 17 foreign bank accounts, with
6 total balances of \$45,926,517, and it stated that some of those accounts were
7 held in the names of non-operational foreign entities that were formed for the
8 sole purpose of holding such foreign bank accounts. One of those entities is
9 known as Seohyun International, Ltd. ("Seohyun Ltd."), and Mr. Cohen's
10 Schedule of Assets and Debts stated that it held accounts at Mega
11 International Bank and at Shanghai Commercial Bank. As described in
12 paragraph 19 below, the account statements for Seohyun Ltd. were critical
13 documents that we needed to analyze AMP Plus' unreported net income, but
14 these documents were not produced until after Mr. Luttrell's deposition on
15 December 21, 2010.

16 7. Tax Returns Received In October 2010. In October 2010, MHM received a
17 copy of an October 4, 2010 letter from Jaffe and Clemens, attorneys for Mr.
18 Cohen. That letter stated that Ms. Cohen would need the documents sent
19 with it to file her own 2009 tax return. For example, a copy of a 2009 K-1
20 from AMP Plus' was provided with the October 4, 2010 letter. At that time, we
21 had not been provided with the 2009 income tax return for AMP Plus' [with
22 the exception of the Schedule K-1] and also did not have sufficient time or
23 information to determine whether the income tax documents accurately
24 reported income (Ms. Cohen's year 2009 income tax return was due 11 days
25 later). On October 14, 2010, the day before Ms. Cohen's 2009 tax return was
26 due, MHM received a copy of Mr. Cohen's year 2009 individual income tax
27 return. However, we did not know whether that document was accurate. As
28 discussed in detail in paragraphs 15 through 17 below, Mr. Cohen later

provided draft amended tax returns for the 2009 year on April 15, 2011, after the support hearing in January 2011, which showed that the parties' income on their 2009 returns was understated by almost \$1 million.

8. MHM's October 2010 Declaration. In October 2010, I assisted Mr. Luttrell in preparing a declaration which set forth our opinions about Ms. Cohen's and Mr. Cohen's respective incomes and the assets available to pay attorney's fees, accountant's fees and costs. At that time, MHM had not received documents which we needed to determine whether the 2009 individual and business tax returns received from Mr. Cohen were correct. The documents that we had not received included documents showing AMP Plus' receivables (e.g., invoices sent to customers and ledgers or other documents showing amounts owed by customers), documents showing AMP Plus' payables (e.g., invoices received from AMP Plus' vendors and ledgers of other documents showing AMP Plus' payables), documents showing AMP Plus' inventory (e.g., purchases journal or inventory reports), and cash receipts and disbursements journals or some other kind of check register. Additionally, we had not received bank account statements for several banks listed on Mr. Cohen's September 15, 2010 Schedule of Assets and Debts, including statements for the Mega International and Shanghai Commercial Bank accounts. I wanted to receive bank statements for those accounts because bank statements received from Mr. Cohen for other accounts (e.g., Bank Leumi) reflected tens of millions of dollars of transfers to and from accounts in the name of Seohyun International, Ltd., but we were unable to entirely determine the extent of such transfers without that entities' bank statements.

9. Mr. Cohen's Deposition. On November 16, 2010 and November 17, 2010, I was at Kolodny & Anteau when Mr. Sturman deposed Mr. Cohen, and I heard Mr. Cohen testify that he had not reported foreign bank accounts on tax

1 returns in order to avoid paying income taxes.¹ Additionally, I heard Mr.
2 Cohen testify that he caused AMP Plus' inventory to be inaccurately reported
3 on its 2008 tax returns in order to reduce the business' taxable income.² At
4 that time, MHM had not received documents from Mr. Cohen that would allow
5 us to determine the amount by which the inventory was misstated, what the
6 correct amounts of inventory were, and the extent to which misstatements of
7 inventory affected AMP Plus' income. The documents provided by Mr. Cohen
8 showed that AMP Plus' inventory was misstated because the beginning
9 inventory on AMP Plus' year 2009 tax return was \$1,640,709 higher than the
10 ending inventory shown on AMP Plus' year 2008 tax return. However, we
11 had no documents to verify the correct amount of inventory adjustments.

12 10. MHM's November 2010 Declaration. In November 2010, I assisted Mr.
13 Luttrell in preparing a declaration setting forth our opinions about Ms. Cohen's
14 and Mr. Cohen's respective income and liquid assets available to pay
15 attorney's fees, accountant's fees and costs. That declaration supplemented
16 Mr. Luttrell's October 21, 2010 declaration, primarily by using additional
17 information obtained at Mr. Cohen's deposition. However, we still had not
18 received supporting documents from Mr. Cohen showing AMP Plus' 2010
19 year-to-date income, AMP Plus' accounts receivable, AMP Plus' accounts
20 payable, and AMP Plus' inventory. Additionally, we still had not received
21 Mega International and Shanghai Commercial Bank account statements from
22 Mr. Cohen.

23 11. MHM's December 2010 Declaration. In December 2010, I assisted Mr.
24 Luttrell in preparing a declaration setting forth our opinions about Ms. Cohen's
25 and Mr. Cohen's respective income available for support and liquid assets
26 available to pay attorney's fees and costs. That declaration was prepared in
27

28 ¹ Deposition of Saeed Cohen dated November 17, 2010, page 233, lines 11 - 22

² Deposition of Saeed Cohen dated November 17, 2010, page 320, lines 7 - 25; page 321, lines 1 - 6

1 reply to Mr. Cohen's Responsive Declaration dated December 9, 2010. At
2 the time of Mr. Luttrell's declaration, MHM still had not received supporting
3 documents from Mr. Cohen showing AMP Plus' 2010 year-to-date income,
4 AMP Plus' accounts receivable, AMP Plus' accounts payable, and AMP Plus'
5 inventory. Additionally, we still had not received Mega International and
6 Shanghai Commercial Bank account statements. Due to the fact that we did
7 not have current income information for AMP Plus', we made support
8 calculations based on year 2009 tax returns received from Mr. Cohen since
9 he stated that his 2009 tax returns were accurate at page 10, line 23 of his
10 December 9, 2010 declaration. [Because Mr. Cohen was in the process of
11 voluntarily disclosing unreported income, we also believed that he had
12 attempted to be more accurate in preparing his 2009 tax return than he had
13 been during prior years.]

14 12. Mr. Luttrell's December 2010 Deposition. In December 2010, Mr. Luttrell and
15 I reviewed documents in preparation for his deposition on December 21,
16 2010. On December 22, 2010, the day after Mr. Luttrell's deposition, MHM
17 received many of the Mega International and Shanghai Commercial Bank
18 account statements [a portion of which he received at that deposition] that
19 previously had not been produced.

20 13. The January 2011 Support Hearing. On January 12, 2011, Mr. Cohen
21 testified that the profit and loss of AMP Plus for 2010 was not final.³
22 Additionally, Judge Nelson stated that she was going to make support Orders
23 based on MHM's guideline support calculation and Mr. Luttrell's testimony⁴
24 which, in turn, was based on the 2009 tax returns that Mr. Cohen had stated
25 in his declaration dated December 9, 2010, at page 10, lines 1 and 23, were
26 accurate. As of January 12, 2011, we did not have sufficient documents or

27
28 ³ Reporter's Transcript dated January 12, 2011, page 138, lines 24 – 28

⁴ Reporter's Transcript dated January 12, 2011, page 119, lines 19 – 28; page 120, lines 1 – 7

1 information to allow us to determine whether the year 2009 tax returns from
2 Mr. Cohen were, or were not, accurate and relied on the representations of
3 Mr. Cohen in that regard. As discussed more fully below, we learned after the
4 hearing that Mr. Cohen amended those returns, reflecting that income was
5 understated by \$981,701.

6 14. AMP Plus' Amended Tax Returns. On March 23, 2011, my firm received a
7 copy of a letter from Jaffe and Clemens, as well as draft amended tax returns
8 for AMP Plus' for 2003 through 2009. We compared those draft amended tax
9 returns to the 2003 through 2009 tax returns that we received for AMP Plus in
10 September 2010. In total, those draft amended tax returns for AMP Plus
11 reflected \$47,692,770 of additional, previously unreported income, primarily
12 related to overstatements in AMP Plus' purchases of goods and unreported
13 money transferred to it by vendors. At that time, we did not have documents
14 to determine whether those draft amended tax returns were accurate
15 because, for example, we did not have invoices from AMP Plus' vendors,
16 AMP Plus' inventory documents, complete accounting books of entry for AMP
17 Plus (i.e., ledgers and journals) and other relevant accounting documents.

18 15. Individual Income Tax Returns. On April 15, 2011, my firm received a copy of
19 a letter from Jaffe and Clemens, as well as draft amended individual tax
20 returns for Ms. Cohen and Mr. Cohen for 2003 through 2008 [the years that
21 they filed joint returns] and a draft amended individual tax return for Mr.
22 Cohen for 2009. We compared those draft amended individual tax returns to
23 the originally-filed 2003 through 2009 tax returns. On a combined basis,
24 those draft amended individual income tax returns reflected \$55.3 million of
25 additional, previously unreported income for the parties which was mostly
26 attributable to the adjustments made on the AMP Plus' draft amended tax
27 returns that were received about three weeks earlier. At that time, we did not
28 have documents to determine whether those draft amended individual tax

1 returns were accurate because most of the adjustments were based on AMP
2 Plus' amended tax returns and we did not have sufficient documents to
3 determine whether those draft tax returns were accurate.

4 16. Mr. Cohen's Motion to Vacate or to Modify the Court's Support Orders. On or
5 about May 17, 2011, we received a copy of Mr. Cohen's Motion to Vacate and
6 enter a new support Order, for a new trial, for reconsideration, to reopen
7 evidence and/or to modify the existing support Order. In the declaration of
8 Saeed Cohen dated May 13, 2011, at page 62, lines 23-28, Mr. Cohen stated
9 that he had determined that AMP Plus' year 2009 income tax return
10 understated its income by approximately \$1 million. At that time, we did not
11 have sufficient documents or information available to determine whether that
12 almost \$1 million adjustment was correct. Upon reviewing Mr. Cohen's
13 declaration, MHM calculated guideline support using the amount of income
14 set forth in the amended year 2009 tax returns and we determined that total
15 combined guideline child and spousal support was \$324,646 based on that
16 information as set forth on page 11, Table 5, of Mr. Luttrell's declaration dated
17 June 14, 2011. Using that support calculation, I determined MHM's prior
18 calculation of support and the Court's support Orders were \$55,652 less per
19 month, on a combined basis, than they would have been if we had known
20 about the additional, previously unreported \$981,701 of income.

21 17. Additional Amended Tax Returns. On or about May 20, 2011, MHM received
22 a copy of a letter from Jaffe and Clemens, additional draft amended tax
23 returns for AMP Plus, additional joint amended tax returns for the parties, and
24 workpapers from Gary Howard, CPA, the accountant who prepared the draft
25 amended tax returns. I reviewed these draft amended tax returns, and Mr.
26 Howard's working papers. However, I was unable to determine whether the
27 draft amended tax returns received in May 2011 were accurate because
28 almost all of the adjustments shown on Mr. Howard's working papers were

1 made "per Steve," referring to Mr. Cohen, and I did not know the basis, if any,
2 that Mr. Cohen had for telling Mr. Howard to make the approximately \$47.7
3 million of adjustments shown on the amended tax returns. [I later telephoned
4 Mr. Howard who told me that he asked Mr. Cohen to provide him with
5 documents to verify the adjustments, such as purchase invoices, however,
6 Mr. Cohen did not provide him with any such documents.]

7 18. Mr. Cohen's Production of Documents in August 2011. According to Mr.
8 Sturman, on August 26, 2011, Mr. Cohen produced boxes of documents at a
9 facility called DDS which is located in downtown Los Angeles. Starting on
10 August 29, 2011, other accountants from MHM and I went to a document
11 storage facility, DDS, and started to review those documents. I also obtained
12 an estimate of the number of pages contained in the 269 boxes from DDS,
13 which also has a copying service. According to DDS, the boxes contained
14 about 1.2 million pages. Other accountants from MHM and I have been at
15 DDS about 17 days since August 29, 2011. We have conducted a general
16 review of all of the boxes. However, we have ceased our review of the
17 documents maintained at DDS since we have not been provided with all the
18 subsidiary ledgers and journals, banking documents, vendor invoices and
19 sales invoices of AMP Plus, as discussed in further detail in paragraph 20
20 below. These missing documents are needed in order for us to analyze the
21 accuracy of the figures set forth on the income tax returns and financial
22 statements of AMP Plus by comparing source documents to the reported
23 amounts.

24 19. Documents Produced on August 26, 2011. Based on our review so far, the
25 approximately 1.2 million pages of documents that Mr. Cohen delivered to
26 DDS included copies of invoices that AMP Plus' received from vendors,
27 copies purchase orders from customers, copies of inventory records, and
28 many other types of documents we need to verify the accuracy of the general

1 ledgers that we received, the accuracy of original tax returns, the accuracy of
2 amended tax returns, the accuracy of Mr. Cohen's representations about
3 income, to value AMP Plus, and to determine the extent of claims for credits
4 and reimbursements, among other things. We also needed these documents
5 when we were preparing Mr. Luttrell's October 21, 2010, November 30, 2010
6 and December 16, 2010 declarations. However, they were not received until
7 August 2011. As an example of the way in which these documents affect our
8 analysis, they showed us how tens of millions of dollars were accumulated in
9 foreign accounts using AMP Plus as follows:

- 10 a. Based on my review of the vendor invoices produced on August 26,
11 2011, we identified over 675 transactions that had at least two almost
12 identical invoices for the same purchase by AMP Plus (**Exhibit FFF**).
13 The invoices were identical except for the unit cost of the product and
14 total cost of the product (See **Exhibit GGG** and **HHH** as an example).
- 15 b. For some of these almost duplicate invoices, the amount shown on the
16 higher price invoice was transferred to accounts in the name of
17 Seohyun International, Ltd. and Seohyun International Ltd. then paid
18 out the amount shown on the invoice with the lower price to the third
19 party vendor. The difference remained in Seohyun Ltd's accounts until
20 it was transferred out to other foreign accounts.
- 21 c. For others of these duplicate invoices, the amount shown on the higher
22 price invoice was paid directly to a third party vendor who then
23 transferred the difference between the amounts listed on the higher
24 and lower invoices into accounts in the name of Seohyun International,
25 Ltd. This difference remained in Seohyun Ltd's accounts until it was
26 transferred out to other foreign accounts. Importantly, after October
27 2008, the month when the Petition for Dissolution of Marriage was
28 filed, the account statements no longer showed deposits from vendors

1 even though we have duplicate invoices from such vendors after
2 October 2008 that total about \$650,000 (**Exhibit III**). In addition, we
3 have invoices after October 2008 where we are missing either the
4 higher or lower duplicate invoice. If we impute the other duplicate
5 amount consistent with the prior history of inflating the prices, there is
6 approximately an additional \$90,000 in deposits also not shown on the
7 account statements (**Exhibit JJJ**). Accordingly, if those third party
8 vendors continued to transfer money back to accounts controlled by
9 Mr. Cohen, then it was to accounts for which we have not been
10 provided information. We will need to obtain documents from the third
11 party vendors to determine whether they made such transfers, the
12 amounts of such transfers and the accounts to which the transfers
13 were made.

- 14 d. In certain instances, we reviewed purchase invoices that were paid
15 and deducted twice by AMP Plus (**Exhibit KKK**).
- 16 e. Of particular importance, our review of these documents over the past
17 few months revealed that almost all of the \$47.7 million in adjustments
18 set forth in the draft amended tax returns of AMP Plus involved
19 transactions that went through Mega International and Shanghai
20 Commercial Bank account statements; statements that were not
21 produced by Mr. Cohen until after Mr. Luttrell's deposition on
22 December 21, 2010.


23 20. Documents produced after August 26, 2011 or still not produced. Although
24 we received about 1.2 million pages of documents in August 2011, numerous
25 documents still have not been provided. These documents include year 2011
26 bank statements for Mr. Cohen and AMP Plus as well as the electronic files
27 containing subsidiary ledgers and journals of AMP Plus that were just
28 produced on September 26, 2011. AMP Plus uses accounting software

published by the company ACCPAC™. According to the ACCPAC™ computer consultant retained by Kolodony & Anteau on behalf of Ms. Cohen, Mr. Cohen did not produce a complete copy of the ACCPAC™ accounting records including directories and/or electronic files referred to as CashBook, Report Writer, Report Master Program and Quote Master and therefore we cannot print certain accounting reports which are requested by us to complete our analysis. Based on my firm's review of the 1.2 million pages of documents, which is ongoing, we are missing virtually all sales invoices to customers as well as a number of vendor invoices and wire transfer documents have not been provided, which are summarized on **Exhibit LLL and MMM**. We have not completed our review of the documents and it is possible that some of the documents I have identified as missing are contained within the 1.2 million page population. In addition, our office received over 3,700 pages of documents yesterday that I have not had the opportunity to review as of the date of this declaration. It has been extremely difficult to locate every single document since Mr. Cohen did not segregate the documents relevant to the adjustments made in the proposed amended income tax returns. Finally, we still do not know all of the documents, if any that Mr. Cohen relied upon when instructing Mr. Howard to make about \$47.7 million of adjustments reflected on the draft amended tax returns that we received in May 2011 since he did not segregate those documents.

21. Lack of Critical Documents Needed. During the 11 month period from September 23, 2010 through August 26, 2011, my firm's work has included analyzing Saeed Cohen's gross income available for spousal and child support, analyzing income from AMP Plus, reviewing amended tax returns and workpapers for AMP Plus and the parties, in addition to conducting an extensive analysis of what were apparent improprieties in the reported profits of AMP (based on our review and tracing of amounts in the bank statements

1 and other documents produced as of that time). As discussed above, the
2 vast majority of documents produced on August 26, 2011 were not produced
3 prior to that date. As a result, we conducted this analysis with partial
4 accounting documents such as bank statements. The lack of documents
5 produced by Mr. Cohen, and the significant delays in producing critical
6 documents such as bank account statements for Mega International and
7 Shanghai Commercial Bank (which were produced on December 22, 2010,
8 after Mark Luttrell's 3 declarations and his deposition), purchase documents,
9 shipping documents, inventory records, ledgers and journals, and other
10 source documents has caused my firm to spend an excessive amount of time
11 trying to prepare for the support hearings in this case. The above facts have
12 put my firm at a disadvantage in completing our work and in a position of
13 trying to figure out what created the alleged \$47.7 million of improprieties
14 reported on the income tax returns of AMP Plus (and whether this amount
15 even correctly quantifies all such improprieties) without all of the relevant
16 financial documents, as well as trying to determine the source of funds that
17 generated the \$46 million of funds held in offshore accounts as of December
18 31, 2010 (and whether this amount accurately and completely represents all
19 foreign accounts and funds held therein).

20
21 Executed this 16 day of November 2011.

22 
23 William A. Duerksen, CPA/ABV, CFE

KOLODNY & ANTEAU
9100 Wilshire Boulevard - Ninth Floor, West Tower
Beverly Hills, California 90212-3425
(310) 271-5533 Fax (310) 271-3918

PROOF OF SERVICE

DELIVERY TO, AND BY, MESSENGER

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county where the service of the hereinbelow described document is to take place. My business address is 9100 Wilshire Boulevard, Ninth Floor, West Tower, Beverly Hills, CA 90212-3425. I am over the age of 18 and not a party to this action.

On **November 17, 2011**, I caused a copy of the hereinbelow described document to be served on the Respondent in this action and all interested parties by delivering it to a messenger for personal delivery as follows:

Bruce A. Clemens, Esq.
Jaffe And Clemens
433 N. Camden Dr., Suite 1000
Beverly Hills, CA 90210

The document which is to be so delivered is designated: **MOTION FOR BREACH OF FIDUCIARY DUTY AND SANCTIONS AGAINST RESPONDENT AND ACCOUNTING.**

A proof of service by the messenger, evidencing the above delivery, will be filed if applicable.

I declare, under penalty of perjury pursuant to the laws of the State of California, that the foregoing is true and correct.


Executed this **17th day of November, 2011**, at Beverly Hills, California.


MICHAEL AGUIRRE

FORM B104 (08/07)

2007 USBC, Central District of California

ADVERSARY PROCEEDING COVER SHEET (Instructions on Page 2)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS Fariba Cohen	DEFENDANTS Saeed Cohen			
ATTORNEYS (Firm Name, Address, and Telephone No.) Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, 11400 Olympic Boulevard, 9th Floor, Los Angeles, CA 90064-1582 Tel: (310) 478-4100	ATTORNEYS (If Known) Levene, Neale, Bender, Yoo & Brill L.L.P., 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067 Tel: (310) 229-1234			
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Complaint for exemption to discharge pursuant to 11 U.S.C. § 523(a)(4) as a result of debtor's fraud and defalcation while acting in a fiduciary capacity.				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input checked="" type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny </td> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input checked="" type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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(continued next column)				
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23			
<input checked="" type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ 50,000,000.00			
Other Relief Sought				

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR Saeed Cohen		BANKRUPTCY CASE NO. 2:13-bk-26483-N	
DISTRICT IN WHICH CASE IS PENDING Central District of California	DIVISIONAL OFFICE Los Angeles		NAME OF JUDGE Honorable Neil W. Bason
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT		ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE		NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 			
DATE 9/23/13	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Simon Aron, Attorney for Plaintiff		

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not presented by an attorney, the plaintiff must sign.

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address		FOR COURT USE ONLY	
Attorney for Plaintiff			
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - _____ DIVISION			
In re:		CASE NO.:	
		CHAPTER:	
Debtor(s).		ADVERSARY NUMBER:	
Versus Plaintiff(s) Defendant(s)		SUMMONS AND NOTICE OF STATUS CONFERENCE IN ADVERSARY PROCEEDING [LBR 7004-1]	

TO THE DEFENDANT: A Complaint has been filed by the Plaintiff against you. If you wish to defend against the Complaint, you must file with the court a written pleading in response to the Complaint. You must also serve a copy of your written response on the party shown in the upper left-hand corner of this page. The deadline to file and serve a written response is _____. If you do not timely file and serve the response, the court may enter a judgment by default against you for the relief demanded in the Complaint.

A status conference in the adversary proceeding commenced by the Complaint has been set for:

Hearing Date: _____

Time: _____

Courtroom: _____

Place:

☐ 255 East Temple Street, Los Angeles, CA 90012

☐ 3420 Twelfth Street, Riverside, CA 92501

☐ 411 West Fourth Street, Santa Ana, CA 92701

☐ 1415 State Street, Santa Barbara, CA 93101

☐ 21041 Burbank Boulevard, Woodland Hills, CA 91367

You must comply with LBR 7016-1, which requires you to file a joint status report and to appear at a status conference. All parties must read and comply with the rule, even if you are representing yourself. You must cooperate with the other parties in the case and file a joint status report with the court and serve it on the appropriate parties at least 14 days before a status conference. A court-approved joint status report form is available on the court's website (LBR form F 7016-1.STATUS.REPORT) with an attachment for additional parties if necessary (LBR form F 7016-1.STATUS.REPORT.ATTACH). If the other parties do not cooperate in filing a joint status report, you still must file with the court a unilateral status report and the accompanying required declaration instead of a joint status report 7 days before the status conference. **The court may fine you or impose other sanctions if you do not file a status report. The court may also fine you or impose other sanctions if you fail to appear at a status conference.**

**KATHLEEN J. CAMPBELL
CLERK OF COURT**

Date of Issuance of Summons and Notice of Status Conference in Adversary Proceeding: _____

By: _____
Deputy Clerk

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **SUMMONS AND NOTICE OF STATUS CONFERENCE IN ADVERSARY PROCEEDING [LBR 7004-1]** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Printed Name

Signature